

# 1989 IOWA CODE SUPPLEMENT

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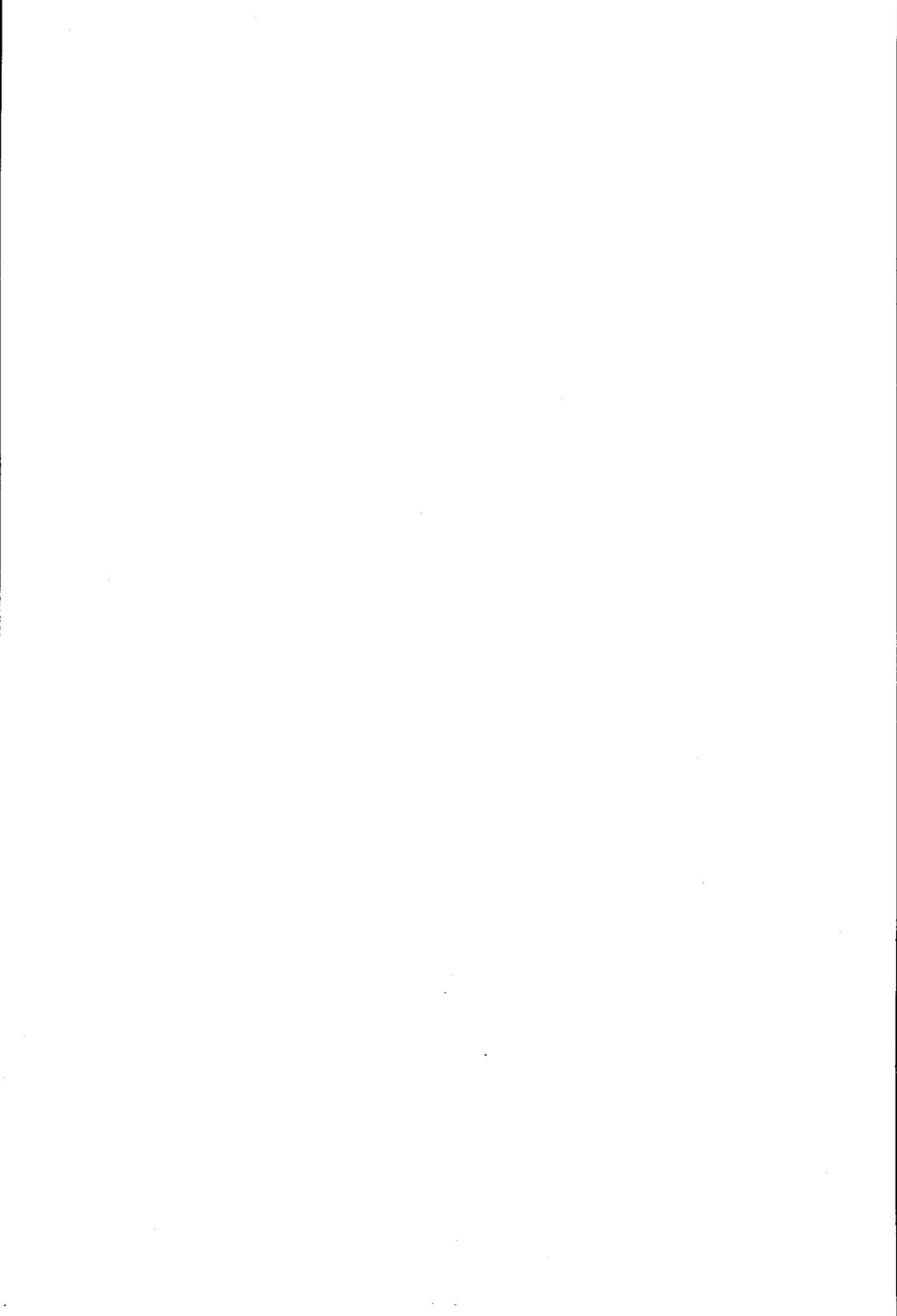
Sections of the Laws of Iowa  
of a General and Permanent Nature  
Enacted, Amended, Repealed or  
otherwise affected by the  
1989 Regular Session  
of the

GENERAL ASSEMBLY OF THE  
STATE OF IOWA

and including amendments to the  
Constitution of the State of Iowa  
effective in 1990 and 1991



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## PREFACE TO 1989 IOWA CODE SUPPLEMENT

This 1989 Iowa Code Supplement shows sections of the laws of Iowa enacted, amended, repealed, or otherwise affected by the 1989 regular session of the Iowa General Assembly, arranged in the numerical sequence followed by the 1989 Iowa Code. Amendments to the Constitution of the State of Iowa, which take effect in 1990 and 1991, are also included. 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, 1989. See the 1989 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 1989 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 1989 Code are not included but will be corrected as necessary and appear in the 1991 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 1989 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 1989 Acts, and a table of corresponding sections from the 1989 Code to the 1989 Code Supplement also appear at the end of this Supplement.

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Legislative Service Bureau

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Iowa Code Editor



# CONSTITUTION OF THE STATE OF IOWA (CODIFIED)

as amended in November 1988

(Amendments to sections 2-5 of Article IV are effective beginning with the general election in 1990; amendments to sections 15, 18, and 19 of Article IV are effective beginning with the second Monday in January 1991.)

## ARTICLE IV.

### EXECUTIVE DEPARTMENT.

**Election and term.** SEC. 2. The governor and the lieutenant governor shall be elected by the qualified electors at the time and place of voting for members of the general assembly. Each of them shall hold office for four years from the time of installation in office and until a successor is elected and qualifies.

**Governor and lieutenant governor elected jointly — returns of elections.** SEC. 3. The electors shall designate their selections for governor and lieutenant governor as if these two offices were one and the same. The names of nominees for the governor and the lieutenant governor shall be grouped together in a set on the ballot according to which nominee for governor is seeking office with which nominee for lieutenant governor, as prescribed by law. An elector shall cast only one vote for both a nominee for governor and a nominee for lieutenant governor. The returns of every election for governor and lieutenant governor shall be sealed and transmitted to the seat of government of the state, and directed to the speaker of the house of representatives who shall open and publish them in the presence of both houses of the general assembly.

**Election by general assembly in case of tie — succession by lieutenant governor.** SEC. 4. The nominees for governor and lieutenant governor jointly having the highest number of votes cast for them shall be declared duly elected. If two or more sets of nominees for governor and lieutenant governor have an equal and the highest number of votes for the offices jointly, the general assembly shall by joint vote proceed, as soon as is possible, to elect one set of nominees for governor and lieutenant governor. If, upon the completion by the general assembly of the canvass of votes for governor and lieutenant governor, it appears that the nominee for governor in the set of nominees for governor and lieutenant governor receiving the highest number of votes has since died or resigned, is unable to qualify, fails to qualify, or is for any other reason unable to assume the duties of the office of governor for the ensuing term, the powers and duties shall devolve to the nominee for lieutenant governor of the same set of nominees for governor and lieutenant governor, who shall assume the powers and duties of governor upon inauguration and until the disability is removed. If both nominees for governor and lieutenant governor are unable to assume the duties of the office of governor, the person next in succession shall act as governor.

**Contested elections.** SEC. 5. Contested elections for the offices of governor and lieutenant governor shall be determined by the general assembly as prescribed by law.

**Terms — compensation.** SEC. 15. The official terms of the governor and lieutenant governor shall commence on the Tuesday after the second Monday of January next after their election and shall continue until their successors are elected and qualify. The governor and lieutenant governor shall be paid compensation and expenses as provided by law. The lieutenant governor, while acting as governor, shall be paid the compensation and expenses prescribed for the governor.

**Duties of lieutenant governor.** SEC. 18. The lieutenant governor shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor.

**Succession to office of governor and lieutenant governor.** SEC. 19. If there be a vacancy in the office of the governor and the lieutenant governor shall by reason of death, impeachment, resignation, removal from office, or other disability become incapable of performing the duties pertaining to the office of governor, the president of the senate shall act as governor until the vacancy is filled or the disability removed; and if the president of the senate, for any of the above causes, shall be incapable of performing the duties pertaining to the office of governor the same shall devolve upon the speaker of the house of representatives; and if the speaker of the house of representatives, for any of the above causes, shall be incapable of performing the duties of the office of governor, the justices of the supreme court shall convene the general assembly by proclamation and the general assembly shall organize by the election of a president by the senate and a speaker by the house of representatives. The general assembly shall thereupon immediately proceed to the election of a governor and lieutenant governor in joint convention.

## CHAPTER 2

### GENERAL ASSEMBLY

#### **2.10 Salaries and expenses—members of general assembly.**

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. Each member shall receive a seventy-five dollar per month allowance for legislative district constituency postage, travel, telephone costs, and other expenses. 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. Reserved.

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. A member of the general assembly shall receive the additional per diem, travel allowances and expenses only for the days of attendance during a special session.

89 Acts, ch 302, §10 SF 536

For salaries effective January 1, 1991, see 89 Acts, ch 303, §13, 18 SF 532

Salary and expenses of lieutenant governor for fiscal year beginning July 1, 1989; 89 Acts, ch 302, §2 SF 536  
Subsection 2 stricken and reserved

#### **2.40 Membership in state insurance plans.**

1. A member of the general assembly may elect to become a member of a state group insurance plan for employees of the state established under chapter 509A subject to the following conditions:

a. The member shall be eligible for all state group insurance plans on the basis of enrollment rules established for full-time state employees excluded from collective bargaining as provided in chapter 20.

b. The member shall pay the premium for the plan selected on the same basis as a full-time state employee excluded from collective bargaining as provided in chapter 20.

c. The member shall authorize a payroll deduction of the premium due according to the member's pay plan selected pursuant to section 2.10, subsection 5.

d. The premium rate shall be the same as the premium rate paid by a state employee for the plan selected.

A member of the general assembly may elect to become a member of a state group insurance plan. A member of the general assembly may continue membership in a state group insurance plan without reapplication during the member's tenure as a member of consecutive general assemblies. For the purpose of electing to become a member of the state health or medical service group insurance plan,

a member of the general assembly has the status of a “*new hire*”, full-time state employee when the member is initially eligible or during the first subsequent annual open enrollment. A member of the general assembly who elects to become a member of a state health or medical group insurance plan shall be exempted from preexisting medical condition waiting periods. A member of the general assembly may change programs or coverage under the state health or medical service group insurance plan during the month of January of odd-numbered years, but program and coverage change selections shall be subject to the enrollment rules established for full-time state employees excluded from collective bargaining as provided in chapter 20. A person who has been a member of the general assembly for two years and who has elected to be a member of a state health or medical group insurance plan may continue to be a member of such state health or medical group insurance plan by requesting continuation in writing to the finance officer within thirty-one days after leaving office. The continuing former member of the general assembly shall pay the total premium and administrative costs for the state plan and shall have the same rights to change programs or coverage as state employees.

2. A part-time employee of the general assembly may elect to become a member of a state group insurance plan for employees of the state established under chapter 509A subject to the following conditions:

a. The part-time employee shall be eligible for all state group insurance plans on the basis of enrollment rules established for full-time state employees excluded from collective bargaining as provided in chapter 20 and shall have the same rights to change programs or coverage as are afforded such state employees.

b. The part-time employee shall pay the total premium and administrative costs for the plan selected through payroll deduction.

c. A part-time employee may continue membership in a state group insurance plan without reapplication during the employee’s employment during consecutive sessions of the general assembly. For the purpose of electing to become a member of the state health or medical service group insurance plan, a part-time employee of the general assembly has the status of a “*new hire*”, full-time state employee when the employee is initially eligible or during the first subsequent enrollment change period.

d. A part-time employee of the general assembly who elects membership in a state health or medical group insurance plan shall state each year whether the membership is to extend through the interim period between consecutive sessions of the general assembly. If the membership is to extend through the interim period the part-time employee shall authorize a payroll deduction for the period of session employment in an amount sufficient to cover the total annual premium and administrative costs for the plan selected. The part-time employee shall notify the finance officer within thirty-one days after the conclusion of the general assembly whether the person’s decision to extend the membership through the interim period is confirmed. If the decision is rescinded, appropriate adjustments shall be made for amounts withheld in advance to cover premium payments. However, adjustments shall not be made for amounts withheld to cover administrative costs.

e. A member of a state health or medical group insurance plan pursuant to this subsection shall have the same rights upon final termination of employment as a part-time employee as are afforded full-time state employees excluded from collective bargaining as provided in chapter 20.

89 Acts, ch 303, §14 SF 532

1989 amendments take effect January 1, 1990; 89 Acts, ch 303, §19 SF 532

Section amended

## **2.45 Committees of the legislative council.**

The legislative council shall be divided into committees, which shall include but not be limited to:

1. The legislative service committee which shall be composed of six members of the legislative council, consisting of three members from each house, to be appointed by the legislative council. The legislative service committee shall select a chairperson from its membership, and shall determine policies relating to the operation of the legislative service bureau, subject to the approval of the legislative council.

2. The legislative fiscal committee, composed of the chairpersons or their designated committee member and the ranking minority party members or their designated committee member of the committees of the house and senate responsible for developing a state budget and appropriating funds, the chairpersons or their designated committee member and the ranking minority party members or their designated committee member of the committees on ways and means, and two members, one appointed from the majority party of the senate by the majority leader of the senate and one appointed from the majority party of the house by the speaker of the house of representatives. In each house, unless one of the members who represent the committee on ways and means is also a member of the legislative council, the person appointed from the membership of the majority party in that house shall also be appointed from the membership of the legislative council. The legislative fiscal committee shall determine policies for the legislative fiscal bureau and shall direct the administration of performance audits and visitations, subject to the approval of the legislative council.

3. The legislative administration committee which shall be composed of six members of the legislative council, consisting of three members from each house, to be appointed by the legislative council. The legislative administration committee shall perform such duties as are assigned it by the legislative council.

4. The legislative capital projects committee which shall be composed of ten members appointed as follows:

a. Two senate members of the legislative fiscal committee or the senate committee on appropriations, one to be appointed by the majority leader of the senate and one to be appointed by the minority leader of the senate.

b. Two house members of the legislative fiscal committee or the house committee on appropriations, one to be appointed by the speaker of the house and one to be appointed by the minority leader of the house.

c. The chairpersons of the senate and house committees on appropriations.

d. Four members of the legislative council, one appointed by the speaker of the house, one by the majority leader of the senate, one by the minority leader of the house, and one by the minority leader of the senate.

The chairperson of the legislative council shall designate the chairperson or chairpersons of the legislative capital projects committee.

89 Acts, ch 298, §1 SF 546  
NEW subsection 4

## 2.46 Powers of legislative fiscal committee.

The legislative fiscal committee may, subject to the approval of the legislative council:

1. *Budget.* Gather information relative to budget matters for the purpose of aiding the legislature to properly appropriate money for the functions of government, and to report their findings to the legislature.

2. *Examination.* Examine the reports and official acts of the executive council and of each officer, board, commission, and department of the state, in respect to the conduct and expenditures thereof and the receipts and disbursements of public funds thereby. All state departments and agencies are required to immediately notify the legislative fiscal committee of the legislative council and the director of the legislative fiscal bureau if any state facilities within their jurisdiction have been cited for violations of any federal, state, or local laws or regulations or have

been decertified or notified of the threat of decertification from compliance with any state, federal, or other nationally recognized certification or accreditation agency or organization.

3. *Reorganization.* Make a continuous study of all offices, departments, agencies, boards, bureaus and commissions of the state government and shall determine and recommend to each session of the legislature what changes therein are necessary to accomplish the following purposes:

a. To reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of state government.

b. To increase the efficiency of the operations of the state government to the fullest extent practicable within the available revenues.

c. To group, co-ordinate, and consolidate judicial districts, agencies and functions of the government, as nearly as may be according to major purposes.

d. To reduce the number of offices, agencies, boards, commissions, and departments by consolidating those having similar functions, and to abolish such offices, agencies, boards, commissions and departments, or functions thereof, as may not be necessary for the efficient and economical conduct of state government.

e. To eliminate overlapping and duplication of effort on the part of such offices, agencies, boards, commissions and departments of the state government.

4. *Administration of legislative data base.* Determine the policy for the content and administration of a legislative data base.

5. *Information needs determination.* Determine the information needs of the general assembly and report them to the director of the department of general services who shall consider such needs in establishing the operating policies for a data base management system.

89 Acts, ch 298, §2 SF 546  
Subsection 2 amended

### **2.47A Powers and duties of legislative capital projects committee.**

1. The legislative capital projects committee shall do all of the following:

a. Receive the recommendations of the governor regarding the funding and priorities of proposed capital projects pursuant to section 8.3A, subsection 2, paragraph "b".

b. Receive the reports of all capital project budgeting requests of all state agencies, with individual state agency priorities noted, pursuant to section 8.6, subsection 13.

c. Receive the five-year capital project priority plan for all state agencies, pursuant to section 8.6, subsection 14.

d. Receive quarterly status reports for all ongoing capital projects of state agencies, pursuant to section 18.12, subsection 15.

e. Examine and evaluate, on a continuing basis, the state's system of contracting and subcontracting in regard to capital projects.

2. The legislative capital projects committee, subject to the approval of the legislative council, may do all of the following:

a. Gather information relative to capital projects, as defined in section 8.3A,\* for the purpose of aiding the general assembly to properly appropriate moneys for capital projects.

b. Examine the reports and official acts of the state agencies, as defined in section 8.3A, with regard to capital project planning and budgeting and the receipt and disbursement of capital project funding.

c. Establish advisory bodies to the committee in areas where technical expertise is not otherwise readily available to the committee. Advisory body members may be reimbursed for actual and necessary expenses from funds appropriated pursuant to section 2.12, but only if the reimbursement is approved by the legislative council.

*d.* Compensate experts from outside state government for the provision of services to the committee from funds appropriated pursuant to section 2.12, but only if the compensation is approved by the legislative council.

*e.* Make recommendations to the legislative fiscal committee, legislative council, and the general assembly regarding issues relating to the planning, budgeting, and expenditure of capital project funding.

3. The capital projects committee shall determine its own method of procedure and shall keep a record of its proceedings which shall be open to public inspection. The committee shall meet as often as deemed necessary, subject to the approval of the legislative council, and the committee shall inform the legislative council in advance of its meeting dates.

89 Acts, ch 298, §3 SF 546

Item veto applied to parts of subsection 1

\*As a result of the governor's item veto, section 8.3A does not contain a complete definition of "capital project"; 89 Acts, ch 298, §4 SF 546

NEW section

## CHAPTER 5

### UNIFORM STATE LAWS

#### 5.4 Duties—reports.

The commissioners shall attend the meeting of the national conference of commissioners on uniform state laws, or arrange for the attendance of at least one of their number at the national conference, and both in and out of the national conference they shall do all in their power to promote uniformity in state laws, upon all subjects where uniformity is deemed desirable and practicable. The commission shall report to the legislative council of the general assembly, an account of its transactions, and its advice and recommendations for legislation. This report shall be printed for presentation to the council. The council shall submit the report to the speaker of the house and president of the senate who shall forward it to the appropriate committees of the general assembly for further study. The commission shall bring about as far as practicable the uniform judicial interpretation of all uniform laws and generally devise and recommend additional legislation or other or further course of action as shall tend to accomplish the purposes of this chapter.

89 Acts, ch 296, §1 SF 141

Section amended

## CHAPTER 6

### CONSTITUTIONAL AMENDMENTS AND PUBLIC MEASURES

#### 6.6 Certification—sample ballot.

The state commissioner of elections shall, not less than sixty-nine days preceding any election at which a constitutional amendment or public measure is to be submitted to a vote of the entire people of the state, transmit to the county commissioner of elections of each county a certified copy of the amendment or measure and a sample of the ballot to be used in such cases, prepared in accordance with law.

89 Acts, ch 136, §1 SF 371

Section amended

## CHAPTER 7E

## EXECUTIVE BRANCH ORGANIZATION

Code editor to develop and implement uniform system of terminology for designation of agencies, units, and positions as established in §7E.2 and 7E.4; 86 Acts, ch 1245, §2064; 89 Acts, ch 296, §94 SF 141

**7E.5 Principal departments and primary responsibilities.**

1. The principal central departments of the executive branch as established by law are listed in this section for central reference purposes as follows:

*a.* The department of management, created in section 8.4, which has primary responsibility for coordination of state policy planning, management of interagency programs, economic reports, and program development.

*b.* The department of personnel, created in section 19A.1, which has primary responsibility for personnel management.

*c.* The department of general services, created in section 18.2, which has primary responsibility for property and records management, risk management, purchasing, printing, and data processing.

*d.* The department of revenue and finance, created in section 421.2, which has primary responsibility for revenue collection and revenue law compliance, financial management and assistance, and the Iowa lottery.

*e.* The department of inspections and appeals, created in section 10A.102, which has primary responsibility for coordinating the conducting of various inspections, investigations, appeals, hearings, and audits.

*f.* The department of agriculture and land stewardship, created in section 159.2, which has primary responsibility for encouraging, promoting, and advancing the interests of agriculture and allied industries. The secretary of agriculture is the director of the department of agriculture and land stewardship.

*g.* The department of commerce, created in section 546.2, which has primary responsibility for business and professional regulatory, service, and licensing functions.

*h.* The Iowa department of economic development, created in section 15.104, which has primary responsibility for programs for carrying out the economic development policies of the state.

*i.* The department of employment services, created in section 84A.1, which has primary responsibility for administering the laws relating to unemployment compensation insurance, job placement and training, employment safety, labor standards, workers' compensation, and related matters.

*j.* The department of human services, created in section 217.1, which has primary responsibility for services to individuals to promote the well-being and the social and economic development of the people of the state.

*k.* The Iowa department of public health, created in chapter 135, which has primary responsibility for supervision of public health programs, promotion of public hygiene and sanitation, treatment and prevention of substance abuse, and enforcement of related laws.

*l.* The department of elder affairs, created in section 249D.21, which has primary responsibility for leadership and program management for programs which serve the senior citizens of the state.

*m.* The department of cultural affairs, created in section 303.1, which has primary responsibility for managing the state's interests in the areas of the arts, history, libraries, and other cultural matters.

*n.* The department of education, created in section 256.1, which has primary responsibility for supervising public education at the elementary and secondary levels and for supervising the merged area schools.

*o.* The department of corrections, created in section 246.102, which has primary responsibility for corrections administration, corrections institutions,

prison industries, and the development, funding, and monitoring of community-based corrections programs.

*p* The department of public safety, created in section 80.1, which has primary responsibility for statewide law enforcement and public safety programs that complement and supplement local law enforcement agencies and local inspection services.

*q* The department of public defense, created in section 29.1, which has primary responsibility for state military forces, disaster services, and veterans affairs.

*r* The department of natural resources, created in section 455A.2, which has primary responsibility for state parks and forests, protecting the environment, and managing energy, fish, wildlife, and land and water resources.

*s* The department of transportation, created in section 307.2, which has primary responsibility for development and regulation of highway, railway, and air transportation throughout the state, including public transit.

*t* The department of human rights, created in section 601K.1, which has primary responsibility for services relating to Spanish-speaking people, children, youth, and families, women, persons with disabilities, community action agencies, criminal and juvenile justice planning, the status of blacks, and deaf persons.

*u* In the area of higher education, an agency headed by the state board of regents and including all the institutions administered by the state board of regents, which has primary responsibility for state involvement in higher education.

*u* The department for the blind, created in section 601L.2, which has primary responsibility for services relating to blind persons.

2. *a* There is a civil rights commission, a public employment relations board, an interstate cooperation commission, a campaign finance disclosure commission, and an Iowa law enforcement academy.

*b* The listing of additional state agencies in this subsection is for reference purposes only and is not exhaustive.

3. The responsibilities listed for each department and agency in this section are generally descriptive of the department's or agency's duties, are not all-inclusive, and do not exclude duties and powers specifically prescribed for by statute, or delegated to, each department or agency.

89 Acts, ch 83, §1 SF 112

Subsection 1, paragraph t amended

## **7E.6 Compensation of members of boards, committees, commissions, and councils.**

1. *a* Any position of membership on any board, committee, commission, or council in the executive branch of state government which is compensated by the payment of a per diem to the holder of that position under the statutory law in effect on January 1, 1986, shall continue to be compensated by per diem in the amount so set, notwithstanding any other law to the contrary.

*b* Reimbursement of expenses to the holder of any position governed by this subsection shall be as provided in the applicable law.

*c* In regard to any board, committee, commission, or council which has its name or organizational location altered after January 1, 1986, the statutory provision on the subject of per diem compensation which was applicable to it on January 1, 1986, shall continue to govern such agency and its successor agency, notwithstanding the change in name or organizational location.

2. Any position of membership on any board, committee, commission, or council in the state government which has a compensation level limited to expenses only is eligible to receive, in addition to such actual expense reimbursement, an additional expense allowance of forty dollars per day if the holder of any such position applies for such additional expense allowance and the holder of the

position has an income level of one hundred fifty percent or less of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

3. Any position of membership on the lottery board which currently receives a salary shall receive during the 1986-1987 fiscal year a salary at one-half of the level received in the 1985-1986 fiscal year and a compensation of forty dollars per day and expenses in the 1987-1988 fiscal year and each fiscal year thereafter.

4. Any position of membership on the transportation commission shall be compensated at an annual rate of ten thousand dollars.

5. Any position of membership on the board of parole, the public employment relations board, the commerce commission, and the employment appeal board shall be compensated as otherwise provided in law.

6. All of the compensation provisions of this section are subject to the proper appropriations being made in the state budget legislation.

7. The Code editor may change any reference to the compensation of any position of membership on any board, committee, commission, or council in the state government so that the reference is consistent with this section.

8. It is the intent of the general assembly that this section shall be the governing provision on the subject of the compensation of any position of membership on any board, committee, commission, or council in the state government and that the provisions of this section shall govern over any conflicting provision of law except provisions enacted subsequent to July 1, 1986, notwithstanding the provisions of section 4.7.

89 Acts, ch 296, §2.3 SF 141  
 1989 amendment to subsection 3 by 89 Acts, ch 296, §2, deleting provisions relating to racing commission, takes effect July 1, 1989 SF 141  
 For amendments effective January 1, 1991, see 89 Acts, ch 303, §15, 16, 18 SF 532  
 Subsections 3 and 8 amended

## CHAPTER 8

### BUDGET AND FINANCIAL CONTROL ACT

#### 8.3A Capital project planning and budgeting—governor's duties.

1. *Definitions.* For the purposes of this section:

a. "*Capital project*" does not include highway and right-of-way projects or airport capital projects undertaken by the state department of transportation and financed from dedicated funds or capital projects funded by nonstate grants, gifts, or contracts obtained at or through state universities, if the projects do not require a commitment of additional state resources for maintenance, operations, or staffing.

A capital project shall not be divided into smaller projects in such a manner as to thwart the intent of this section to provide for the evaluation of a capital project whose cost cumulatively equals or exceeds two hundred fifty thousand dollars.

b. "*Facility*" means a distinct parcel of land or a building used by the state or a state agency for a specific purpose.

c. "*State agency*" means any executive, judicial, or legislative department, commission, board, institution, division, bureau, office, agency, or other entity of state government.

2. *Duties.* The governor shall:

a. Develop criteria for the evaluation of proposed capital projects which shall include but not be limited to the following:

- (1) Fiscal impacts on costs and revenues.
- (2) Health and safety effects.
- (3) Community economic effects.

- (4) Environmental, aesthetic, and social effects.
  - (5) Amount of disruption and inconvenience caused by the capital project.
  - (6) Distributional effects.
  - (7) Feasibility, including public support and project readiness.
  - (8) Implications of deferring the project.
  - (9) Amount of uncertainty and risk.
  - (10) Effects on interjurisdictional relationships.
  - (11) Advantages accruing from relationships to other capital project proposals.
  - (12) Private sector contracting for construction, operation, or maintenance.
- b. Make recommendations to the general assembly and the legislative capital projects committee regarding the funding and priorities of proposed capital projects.
  - c. Develop maintenance standards and guidelines for capital projects.
  - d. Review financing alternatives available to fund capital projects, including the evaluation of the advantages and disadvantages of bonding for all types of capital projects undertaken by all state agencies.
  - e. Monitor the debt of the state or a state agency.

89 Acts, ch 298, §4 SF 546

Item veto applied to parts of new subsection 1  
NEW section

## 8.6 Specific powers and duties.

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

1. *Forms.* To consult with all state officers and agencies which receive reports and forms from county officers, in order to devise standardized reports and forms which will permit computer processing of the information submitted by county officers, and to prescribe forms on which each municipality, at the time of preparing estimates required under section 24.3, shall be required to compile in parallel columns the following data and estimates for immediate availability to any taxpayer upon request:
  - a. For the immediate prior fiscal year, revenue from all sources, other than revenue received from property taxation, allocated to each of the several funds and separately stated as to each such source, and for each fund the unencumbered cash balance thereof at the beginning and end of the year, the amount received by property taxation allocated to each fund, and the amount of actual expenditure for each fund.
  - b. For the current fiscal year, actual and estimated revenue, from all sources, other than revenue received from property taxation, and separately stated as to each such source, allocated to each of the several funds, and for each fund the actual unencumbered cash balance available at the beginning of the year, the amount to be received from property taxation allocated to each fund, and the amount of actual and estimated expenditures, whichever is applicable.
  - c. For the proposed budget year, an estimate of revenue from all sources, other than revenue to be received from property taxation, separately stated as to each such source, to be allocated to each of the several funds, and for each fund the actual or estimated unencumbered cash balance, whichever is applicable, to be available at the beginning of the year, the amount proposed to be received from property taxation allocated to each fund, and the amount proposed to be expended during the year plus the amount of cash reserve, based on actual experience of prior years, which shall be the necessary cash reserve of the budget adopted exclusive of capital outlay items. The estimated expenditures plus the required cash reserve for the ensuing fiscal year less all estimated or actual unencumbered balances at the beginning of the year and less the estimated income from all sources other than property taxation shall equal the amount to be received from property taxes, and such amount shall be shown on the proposed budget estimate.

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

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

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

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

5. *Certification for levy.* On February 1 the director shall, for each fiscal year, certify to the department of revenue and finance the amount of money to be levied for general state taxes.

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

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

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

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

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

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

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

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

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

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

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

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

i. Statements showing:

- (1) The condition of the treasury at the end of the last fiscal year.
- (2) The estimated condition of the treasury at the end of the current fiscal year.
- (3) The estimated condition of the treasury at the end of the next fiscal year, if the director's recommendations are adopted.
- (4) An estimate of the taxable value of all the property within the state.
- (5) The estimated aggregate amount necessary to be raised by a state levy.
- (6) The amount per thousand dollars of taxable value necessary to produce such amount.
- (7) Other data or information as the director deems advisable.

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

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

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

13. *Capital project budgeting requests.* To compile annually, no later than October 1, all capital project budgeting requests of all state agencies, as capital project and state agency are defined in section 8.3A,\* and to consolidate the requests, with individual state agency priorities noted, into a report for submission to the legislative capital projects committee not later than October 1, with any additional information regarding such capital project budgeting requests or priorities to be compiled and submitted in the same manner no later than November 1.

14. *Capital project priority plan.* To prepare annually, in cooperation with the department of general services, a five-year capital project priority plan for all state agencies, as capital project and state agency are defined in section 8.3A,\* to be submitted no later than July 1, beginning in the year 1990, to the legislative capital projects committee. The plan shall include but not be limited to the following:

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

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

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

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

e. The proposed means of funding each capital project.

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

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

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

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

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

15. *Capital project planning and budgeting authority.* To call upon any state agency, as defined in section 8.3A, for assistance the director may require in performing the director's duties under subsections 13 and 14. All state agencies, upon the request of the director, shall assist the director and are authorized to make available to the director any existing studies, surveys, plans, data, and other materials in the possession of the state agencies which are relevant to the director's duties.

89 Acts, ch 284, §1 SF 119; 89 Acts, ch 298, §5 SF 546

\*As a result of the governor's item veto, section 8.3A does not contain a complete definition of "capital project"; 89 Acts, ch 298, §4 SF546

Subsection 1, unnumbered paragraph 1 amended

NEW subsections 13-15

## 8.22 Nature and contents of budget.

The budget shall consist of three parts, the nature and contents of which shall be as follows:

### PART I

*Governor's budget message.* Part I shall consist of the governor's budget message, in which the governor shall set forth:

1. The governor's program for meeting all the expenditure needs of the government for the fiscal year, indicating the classes of funds, general or special, from which appropriations are to be made and the means through which the expenditures shall be financed.

The governor's program shall include a single budget request for all capital projects, as defined in section 8.3A, \*proposed by the governor. The request shall include but not be limited to the following:

- a. The purpose and need for each capital project.
- b. A priority listing of capital projects.
- c. The costs of acquisition, lease, construction, renovation, or demolition of each capital project.
- d. The identification of the means and source of funding each capital project.
- e. The estimated operating costs of each capital project after completion.
- f. The estimated maintenance costs of each capital project after completion.
- g. The consequences of delaying or abandoning each capital project.
- h. Alternative approaches to meeting the purpose or need for each capital project.

- i. Alternative financing mechanisms.

- j. A cost-benefit analysis or economic impact of each capital project.

2. Financial statements giving in summary form:

- a. The condition of the treasury at the end of the last completed fiscal year, the estimated condition of the treasury at the end of the year in progress, and the estimated condition of the treasury at the end of the following fiscal year if the governor's budget proposals are put into effect.

- b. Statements showing the bonded indebtedness of the government, debt authorized and unissued, debt redemption and interest requirements, and condition of the sinking funds, if any.

- c. A summary of appropriations recommended for the following fiscal year for each department and establishment and for the government as a whole, in comparison with the actual expenditures for the last completed fiscal year and the estimated expenditures for the year in progress.

- d. A summary of the revenue, estimated to be received by the government during the following fiscal year, classified according to sources, in comparison with the actual revenue received by the government during the last completed fiscal year and estimated income during the year in progress.

e. A statement of federal funds received in the form of block or categorical grants which were not included in the governor's budget for the previous fiscal year and a statement of anticipated block grants and categorical grants. The budget shall indicate how the federal funds will be used and the programs to which they will be allocated. The amount of state funds required to implement the programs to which the federal funds will apply shall also be indicated. The departments shall provide information to the director on the anticipated federal block grants and categorical grants to be received on or before November 1 of each year. The director shall use this information to develop an annual update of the statement of federal funds received which shall be provided to the general assembly.

f. Other financial statements, data, and comments as in the governor's opinion are necessary or desirable in order to make known in all practicable detail the financial condition and operation of the government and the effect that the budget as proposed by the governor will have on the financial condition and operation.

If the estimated revenues of the government for the ensuing fiscal year as set forth in the budget on the basis of existing laws, plus the estimated amounts in the treasury at the close of the year in progress, available for expenditure in the ensuing fiscal year are less than the aggregate recommended for the ensuing fiscal year as contained in the budget, the governor shall make recommendations to the legislature in respect to the manner in which the deficit shall be met, whether by an increase in the state tax or the imposition of new taxes, increased rates on existing taxes, or otherwise, and if the aggregate of the estimated revenues, plus estimated balances in the treasury, is greater than the recommended appropriations for the ensuing fiscal year, the governor shall make recommendations in reference to the application of the surplus to the reduction of debt or otherwise, to the reduction in taxation, or to such other action as in the governor's opinion is in the interest of the public welfare.

#### PART II

*Recommended appropriations.* Part II shall present in detail for the ensuing fiscal year the governor's recommendations for appropriations to meet the expenditure needs of the government from each general class of funds, in comparison with actual expenditures for each of the purposes during the last completed fiscal year and estimated expenditures for the year in progress, classified by departments and establishments and indicating for each the appropriations recommended for:

1. Meeting the cost of administration, operation, and maintenance of the departments and establishments.
2. Appropriations for meeting the cost of land, public improvements, and other capital outlays in connection with the departments and establishments.

Each item of expenditure, actual or estimated, and appropriations recommended for administration, operation, and maintenance of each department or establishment shall be supported by detailed statements showing the actual and estimated expenditures and appropriations classified by objects according to a standard scheme of classification to be prescribed by the director.

#### PART III

*Appropriation bills.* Part III shall include a draft or drafts of appropriation bills having for their purpose to give legal sanction to the appropriations recommended to be made in Parts I and II. The appropriation bills shall indicate the funds,

general or special, from which the appropriations shall be paid, but the appropriations need not be in greater detail than to indicate the total appropriation to be made for:

1. Administration, operation, and maintenance of each department and establishment for the fiscal year.
2. The cost of land, public improvements, and other capital outlays for each department and establishment, itemized by specific projects or classes of projects of the same general character.

89 Acts, ch 298, §6 SF 546

\*As a result of the governor's item veto, section 8.3A does not contain a complete definition of "capital project"; 89 Acts, ch 298, §4 SF 546

Subsection 1, NEW unnumbered paragraph 2 and lettered paragraphs a-j

### **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. For fiscal years beginning on or after July 1, 1989, allotments of appropriations for equipment, land, permanent improvements, and other capital projects, except where contracts have been entered into with regard to the acquisition or project prior to July 1, 1989, shall not be allotted in one amount but shall be allotted at quarterly periods as provided in this section.

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.

89 Acts, ch 309, §6 SF 369  
Unnumbered paragraph 3 amended

### **8.33 Time limit on obligations—reversion.**

No obligation of any kind shall be incurred or created subsequent to the last day of the fiscal year for which an appropriation is made, except when specific provision otherwise is made in the Act making the appropriation. On August 31, or as otherwise provided in an appropriation Act, following the close of each fiscal year, all unencumbered or unobligated balances of appropriations made for that fiscal term revert to the state treasury and to the credit of the funds from which the appropriations were made, except that capital expenditures for the purchase of land or the erection of buildings or new construction continue in force until the attainment of the object or the completion of the work for which the appropriations were made unless the Act making an appropriation for the capital expenditure contains a specific provision relating to a time limit for incurring an obligation or reversion of funds. This section does not repeal sections 19.11 through 19.14.

No payment of an obligation for goods and services shall be charged to an appropriation subsequent to the last day of the fiscal year for which the appropriation is made unless the goods or services are received on or before the last day of the fiscal year, except that repair projects, purchase of specialized equipment and furnishings, and other contracts for services and capital expenditures for the purchase of land or the erection of buildings or new construction or remodeling, which were committed and in progress prior to the end of the fiscal year are excluded from this provision.

89 Acts, ch 284, §2 SF 119  
Unnumbered paragraph 1 amended

### **8.34 Charging off unexpended appropriations.**

Except as otherwise provided by law, the director of the department of revenue and finance shall transfer to the fund from which an appropriation was made, any unexpended or unencumbered balance of that appropriation remaining at the expiration of two months after the close of the fiscal term for which the appropriation was made. At the time the transfer is made on the books of the department of revenue and finance, the director shall certify that fact to the treasurer of state, who shall make corresponding entries on the books of the treasurer's office.

89 Acts, ch 284, §3 SF 119  
Section amended

### **8.35A Information to be given to legislative fiscal bureau.**

1. By July 1 the director of the department of management shall provide a projected expenditure breakdown of each appropriation for the beginning fiscal year to the legislative fiscal bureau in the form and level of detail requested by the bureau. By the fifteenth of each month, the director shall transmit to the legislative fiscal bureau a record for each appropriation of actual expenditures for the prior month of the fiscal year and the fiscal year to date in the form and level of detail as requested by the bureau. By October 1 the director shall transmit the total record of an appropriation, including reversions and transfers for the prior fiscal year ending June 30, to the legislative fiscal bureau.

2. Commencing September 1, the director shall provide weekly budget tapes in the form and level of detail requested by the legislative fiscal bureau reflecting finalized agency budget requests for the following fiscal year as submitted to the

governor. The director shall transmit all agency requests in final form to the legislative fiscal bureau by November 15. Final budget records containing the governor's recommendation and final agency requests shall be transmitted to the legislative fiscal bureau by January 1 or no later than the date the governor's budget document is delivered to the printer. The governor's recommendation included on this record shall be considered confidential by the legislative fiscal bureau until it is made public by the governor. The legislative fiscal bureau shall use this data in the preparation of information for the legislative appropriation process.

3. The director shall communicate any changes or anticipated changes to the budgeting system or the accounting system in writing to the legislative fiscal bureau prior to implementation.

4. A government agency which receives state funds directly from the state or indirectly through a political subdivision as directed by statute and which is not a city, county, or school district is subject to this subsection. A government agency which is subject to this subsection shall submit a copy of its budget to the legislative fiscal bureau, identifying it as being submitted under this subsection, when the budget of that government agency has received approval from the governing head or body of that agency. The copy of the budget submitted to the legislative fiscal bureau shall be on the budget forms provided by the department of management to state agencies under this chapter. The government agency shall also submit a statement identifying any funds available to the agency which are not included in the budget.

89 Acts, ch 284, §4 SF 119  
Subsection 1 amended

## CHAPTER 9A

### REGISTRATION OF ATHLETE AGENTS

#### 9A.11 Penalties—enforcement.

1. The attorney general may institute a legal proceeding against an athlete agent on behalf of the state, and shall institute legal proceedings at the request of the secretary of state, to enforce this chapter.

2. A person who knowingly and willfully violates a provision of this chapter is subject to a civil penalty in an amount not to exceed ten thousand dollars.

3. A person who violates a provision of section 9A.8 commits a serious misdemeanor.

89 Acts, ch 83, §2 SF 112  
Subsection 1 amended

## CHAPTER 10A

### DEPARTMENT OF INSPECTIONS AND APPEALS

#### 10A.101 Definitions.

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

1. "*Administrator*" means the chief administrative law judge, chief inspector, chief investigator, chief auditor, or the person administering a division of the department.

2. "*Department*" means the department of inspections and appeals.

3. “*Director*” means the director of inspections and appeals.

89 Acts, ch 231, §1 HF 490  
Subsection 1 amended and subsections rearranged to alphabetize

**10A.104 Powers and duties of the director.**

The director or designees of the director shall:

1. Coordinate the internal operations of the department and develop and implement policies and procedures designed to ensure the efficient administration of the department.
2. Appoint the administrators of the divisions within the department and all other personnel deemed necessary for the administration of this chapter, except the state public defender, assistant state public defenders, administrator of the racing and gaming commission, members of the employment appeal board, and administrator of the state foster care review board. All persons appointed and employed in the department are covered by the provisions of chapter 19A, but persons not appointed by the director are exempt from the merit system provisions of chapter 19A.
3. Prepare an annual budget for the department.
4. Develop and recommend legislative proposals deemed necessary for the continued efficiency of department functions, and review legislative proposals generated outside of the department which are related to matters within the department’s purview.
5. Adopt rules deemed necessary for the implementation and administration of this chapter in accordance with chapter 17A, including rules governing hearing and appeal proceedings.
6. Issue subpoenas, administer oaths, and take depositions in connection with audits, appeals, investigations, inspections, and hearings conducted by the department. If a person refuses to obey a subpoena issued by the department or otherwise fails to cooperate in proceedings of the department, the director may enlist the assistance of a court of competent jurisdiction in requiring the person’s compliance. Failure to obey orders of the court renders the person in contempt of the court and subject to penalties provided for that offense.
7. Enter into contracts for the receipt and provision of services as deemed necessary. The director and the governor may obtain and accept federal grants and receipts to or for the state to be used for the administration of this chapter.
8. Establish by rule standards and procedures for certifying that targeted small businesses are eligible to participate in the procurement set-aside program established in sections 73.15 through 73.21. The procedure for determination of eligibility shall not include self-certification by a business. Rules and guidelines adopted pursuant to this subsection are subject to review and approval by the director of the department of management. The director shall maintain a current directory of targeted small businesses which have been certified pursuant to this subsection.
9. Administer and enforce chapters 10A, 99B, 135B, 135C, 170, 170A, 170B, 170C, and 191A.
10. Enter into and implement agreements or compacts between the state of Iowa and Indian tribes located in the state which are entered into under the authority of the Indian Gaming Regulatory Act (25 U.S.C. §2701 et seq.). The agreements or compacts shall contain provisions intended to implement the policies and objectives of the Indian Gaming Regulatory Act.

89 Acts, ch 231, §2.4 HF 490  
Subsection 2 amended  
NEW subsections 9 and 10

**10A.105 Confidentiality.**

1. For the purposes of this section, “*governmental entity*” includes an administrative division within the department.

2. The confidentiality of all information in the department produced or collected during or as a result of a hearing, appeal, investigation, inspection, audit, or other function performed by the department on behalf of another governmental entity is governed by the law applicable to the records of that governmental entity. The department may provide information to a governmental entity for which it is conducting a hearing, appeal, inspection, audit, investigation, or other function.

3. The state shall maintain records and materials related to an agreement or compact entered into pursuant to the Indian Gaming Regulatory Act (25 U.S.C. §2701 et seq.), as confidential records if confidentiality is required by the terms of the agreement or compact.

4. The lawful custodian of all records produced or collected during or as a result of any function performed by the department on behalf of another governmental entity is that governmental entity for the purpose of examination and copying pursuant to chapter 22.

5. If information in the possession of the department indicates that a criminal offense may have been committed, the information may be reported to the appropriate criminal justice or regulatory agency.

6. However, this section does not prohibit the department from releasing the minimal amount of information necessary in its judgment to conduct audits, inspections, investigations, appeals, and hearings, and does not prohibit the introduction of the information as evidence at any hearing conducted by the department.

7. The director, administrators, and their designees shall have access to all records deemed by the department to be pertinent to a hearing, appeal, audit, investigation, inspection, or other related function assigned under this chapter.

89 Acts, ch 231, §5 HF 490  
Section stricken and rewritten

### **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.

The allocation of departmental duties to the divisions of the department in sections 10A.202, 10A.302, 10A.402, and 10A.502 does not prohibit the director from reallocating departmental duties within the department.

89 Acts, ch 231, §6, 7 HF 490  
Subsection 5 stricken  
NEW unnumbered paragraph 2

### **10A.202 Responsibilities.**

1. The administrator shall coordinate the division's conduct of appeals and hearings as otherwise provided for by law including but not limited to the following:

a. Hearings and appeals relative to foster care facilities, child day care facilities, administration of the state medical assistance program, administration of the state supplementary assistance program, administration of the food stamps program, and administration of the aid to dependent children program and other programs administered by the department of human services. Decisions of the division in these areas are subject to review by the department of human services.

b. Hearings and appeals relative to occupational safety and health regulations and the state elevator code. Decisions of the division in these areas are subject to review by the employment appeal board.

c. Hearings and appeals relative to administration of the department of general services. Decisions of the division in this area are subject to review by the department of general services.

d. Hearings and appeals relative to administration of the department of transportation. Decisions of the division in this area are subject to review by the department of transportation.

e. Appeals relative to professional and occupational license denials, suspensions, revocations, and other matters involving professional and occupational discipline except those within the jurisdiction of the board of medical examiners, the board of pharmacy examiners, the board of dental examiners, and the board of nursing.

Judicial review of the division's actions in these areas may be sought in accordance with the terms of chapter 17A.

f. Hearings and appeals relative to administration of the department of elder affairs. Decisions of the division in this area are subject to review by the department of elder affairs.

g. Hearings and appeals relative to the administration of the department of inspections and appeals. Decisions of the division in this area are subject to review by the department of inspections and appeals.

h. Hearings and appeals relative to the administration of the department of public health. Decisions of the division in this area are subject to review by the department of public health.

i. Hearings and appeals relative to administration of the department of public safety. Decisions of the division in this area are subject to review by the department of public safety.

j. Hearings and appeals relative to the administration of the department of personnel except those cases within the jurisdiction of the public employment relations board. Decisions of the division in this area shall be determined by the employment appeal board, and the appeal board's decisions shall be considered final agency action under chapter 17A, except for reduction in force appeals which shall be subject to review by the director of the department of personnel.

k. Hearings and appeals relative to the administration of the department of cultural affairs. Decisions of the division in this area are subject to review by the department of cultural affairs.

l. Hearings and appeals relative to administration of the department of natural resources. Decisions of the division in this area are subject to review by the department of natural resources.

m. Hearings and appeals relative to the administration of the department of revenue and finance. Decisions of the division in this area are subject to review by the department of revenue and finance.

n. Hearings relative to motor fuel and special fuel franchises, as provided in chapter 323.

2. The administrator shall coordinate the division's conduct of all nonstatutory administrative hearings and appeals provided for in the Iowa administrative code and bulletin.

89 Acts, ch 231, §8, 9 HF 490; 89 Acts, ch 83, §3 SF 112  
 Subsection 1, paragraph g amended  
 Subsection 1, NEW paragraphs m and n

### **10A.302 Responsibilities.**

The administrator shall coordinate the division's conduct of various audits and other activities as otherwise provided for by law, except those conducted by the state auditor's office, including but not limited to the following:

1. Audits of real estate broker trust accounts.
2. Audits relative to the administration of hospitals and health care facilities.

3. Audits relative to the administration and disbursement of funds under the state supplemental assistance program and the state medical assistance program.
4. Audits relating to the administration and disbursement of funds from games of skill, games of chance, and raffles.
5. Audit reviews of Iowa department of public health contractors.
6. Certification of targeted small businesses.

89 Acts, ch 231, §10-12 HF 490  
 Unnumbered paragraph 1 amended  
 Former subsection 4 stricken  
 NEW subsections 4-6

**10A.701 Racing and gaming division.** Repealed by 89 Acts, ch 231, §35.  
 See §99D.5-99D.7, ch 99F. HF 490

## CHAPTER 11

### AUDITOR OF STATE

#### **11.6 Examination of governmental subdivisions—consultative services—association of counties.**

1. The financial condition and transactions of all cities and city offices, counties, county hospitals organized under chapters 347 and 347A, memorial hospitals organized under chapter 37, entities organized under chapter 28E having gross receipts in excess of one hundred thousand dollars in a fiscal year, merged areas, area education agencies, and all school offices in school districts, shall be examined at least once each year, except that cities having a population of seven hundred or more but less than two thousand shall be examined at least once every four years, and cities having a population of less than seven hundred may be examined as otherwise provided in this section. The examination shall cover the fiscal year next preceding the year in which the audit is conducted. The examination of school offices shall include an audit of activity funds.

Subject to the exceptions and requirements of subsection 2 and subsection 4, paragraph "c", examinations shall be made as determined by the governmental subdivision either by the auditor of state or by certified public accountants, certified in the state of Iowa, and they shall be paid from the proper public funds of the governmental subdivision.

2. *a.* A city, merged area school, school district, area education agency, entity organized under chapter 28E, county, county hospital, or memorial hospital desiring to contract with or employ certified public accountants shall utilize procedures which include a request for proposals.

*b.* The governing body of a city, merged area school, school district, area education agency, entity organized under chapter 28E, county, county hospital, or memorial hospital utilizing the auditor of state instead of a certified public accountant to perform an audit shall notify the auditor of state by June 1 of the year to be audited. If the governing body fails to notify the auditor of state of the decision to use the auditor of state, the auditor of state may perform the audit required in subsection 1 only if provisions are not made by the governing body to contract for the audit.

3. A township or city for which examinations are not required under subsection 1 may contract with or employ the auditor of state or certified public accountants for an examination of its financial transactions and condition of its funds. A financial examination is mandatory on application by one hundred or more taxpayers, or if there are fewer than five hundred taxpayers in the township or city, then by fifteen percent of the taxpayers. Payment for the examination shall be made from the proper public funds of the township or city.

4. In addition to the powers and duties under other provisions of the Code, the auditor of state may at any time cause to be made a complete or partial reaudit of the financial condition and transactions of any city, county, county hospital, memorial hospital, entity organized under chapter 28E, merged area, area education agency, school corporation, township, or other governmental subdivision, or an office of any of these, if one of the following conditions exists:

a. The auditor of state has probable cause to believe such action is necessary in the public interest because of a material deficiency in an audit of the governmental subdivision filed with the auditor of state or because of a substantial failure of the audit to comply with the standards and procedures established and published by the auditor of state.

b. The auditor of state receives from an elected official or employee of the governmental subdivision a written request for a complete or partial reaudit of the governmental subdivision.

c. The auditor of state receives a petition signed by at least fifty eligible electors of the governmental subdivision requesting a complete or partial reaudit of the governmental subdivision. If the governmental subdivision has not contracted with or employed a certified public accountant to perform an audit of the fiscal year in which the petition is received by the auditor of state, the auditor of state may perform an audit required by subsection 1 or 3.

The state audit shall be paid from the proper public funds available in the office of the auditor of state. In the event the audited governmental subdivision recovers damages from a person performing a previous audit due to negligent performance of that audit or breach of the audit contract, the auditor of state shall be entitled to reimbursement on an equitable basis for funds expended from any recovery made by the governmental subdivision.

5. The auditor of state may, within three years of filing, during normal business hours upon reasonable notice of at least twenty-four hours, review the audit work papers prepared by a certified public accountant in the performance of an audit or examination conducted pursuant to this section.

6. An audit required by this section shall be completed within nine months following the end of the fiscal year that is subject to the audit. At the request of the governmental subdivision, the auditor of state may extend the nine-month time limitation upon a finding that the extension is necessary and not contrary to the public interest and that the failure to meet the deadline was not intentional.

7. The auditor of state shall make guidelines available to the public setting forth accounting and auditing standards and procedures and audit and legal compliance programs to be applied in the examination of the governmental subdivisions of the state. The guidelines shall include a requirement that the certified public accountant immediately notify the auditor of state regarding any suspected embezzlement or theft. The auditor shall also provide standard reporting formats for use in reporting the results of an examination of a governmental subdivision.

8. The auditor of state shall provide advice and counsel to public entities and certified public accountants concerning audit and examination matters. The auditor of state shall establish a fee schedule based upon the prevailing rate for the service rendered which shall be approved by the executive council. The auditor of state shall obtain payment from a public entity or certified public accountant for advisory and consultation services rendered pursuant to this subsection. The auditor of state may waive any charge provided in this subsection and may determine to provide certain services without cost.

9. The Iowa state association of counties shall keep accounts as required by the auditor of state. These accounts shall be audited annually by either the auditor of state or a certified public accountant certified in the state of Iowa. The audit shall state all moneys expended for expenses incurred by and salaries paid to legislative representatives and lobbyists of the association.

10. The auditor of state shall establish and collect a filing fee for the filing of each report of examination conducted pursuant to subsections 1 through 3 in an amount approved by the executive council. The funds collected shall be maintained in a segregated account for use by the office of the auditor of state in performing audits conducted pursuant to subsection 4 and for work paper reviews conducted pursuant to subsection 5. Any funds collected by the auditor pursuant to subsection 4 shall be deposited in this account. Notwithstanding section 8.33, the funds in this account shall not revert at the end of any fiscal year.

11. Notwithstanding subsection 10, the filing fee collected for the filing of a report of examination shall not be collected if the audit was performed by the auditor of state.

89 Acts, ch 264, §1 HF 451

Applies to audits of the fiscal year ending June 30, 1989, and subsequent fiscal years; 89 Acts, ch 264, §11 HF 451  
Section stricken and rewritten

### **11.9 County, municipal and school auditors' salaries and expenses.**

Except as otherwise provided in section 11.6, subsection 4, for reaudits, county, municipal and school auditors and their assistants shall, in addition to salary, be reimbursed for their actual and necessary expenses. Salary payments shall include a prorated amount for vacation and sick leave. All payments shall be paid from funds in the state treasury upon certification of the auditor of state, and the general fund shall be reimbursed as provided in sections 11.20 and 11.21.

89 Acts, ch 264, §2 HF 451

Section amended

**11.18 Examination of governmental subdivisions.** Repealed by 89 Acts, ch 264, §10. See §11.6. HF 451

### **11.19 Auditor's powers and duties.**

Where an examination is made under contract with, or employment of, certified or registered public accountants, the auditor shall, in all matters pertaining to an authorized examination, have all of the powers and be vested with all the authority of state auditors employed by the auditor of state, and the cost and expense of the examination shall be paid by the city, school district, or township procuring the examination. An itemized sworn statement of the per diem and expense of the auditor shall be filed with the clerk of the city, township, or school district, before payment thereof. Upon completion of such examination, a signed copy thereof shall be filed by the accountant employed with the auditor of state.

All reports shall be open to public inspection, including copies on file in the office of the state auditor, and refusal on the part of any public official to permit such inspection when such reports have been filed with the state auditor, shall constitute a simple misdemeanor.

In addition to the foregoing, notice that the report has been filed shall be forwarded immediately to each newspaper, radio station or television station located in the city, school district or township which is under investigation or audit; except that if there is no newspaper, radio station or television station located therein, the notice shall be sent to the official newspapers of the county.

Failure to file the report with the auditor of state within thirty days after receiving notification of not receiving the audit report shall bar the accountant from making any governmental subdivision audits under section 11.6 for the following fiscal year.

89 Acts, ch 264, §3 HF 451

Unnumbered paragraph 4 amended

## CHAPTER 12

### TREASURER OF STATE

#### 12.21 Accepting credit card payments.

The treasurer of state may enter into an agreement with a financial institution to provide credit card receipt processing for state departments which are authorized to accept payment by credit card. A department which accepts credit card payments may adjust its fees to reflect the cost of processing as determined by the treasurer of state. A fee may be charged by a department for using the credit card payment method notwithstanding any other provision of the Code setting specific fees. The treasurer of state shall adopt rules to implement this section.

89 Acts, ch 120, §1 HF 709  
NEW section

#### 12.22 through 12.24 Reserved.

#### LINKED INVESTMENTS FOR TOMORROW ACT

Repeal of sunset provision; 89 Acts, ch 234, §12 HF 140; 89 Acts, ch 315, §34 SF 517

#### 12.31 Short title.

This division shall be known as the “*Linked Investments for Tomorrow Act*”.

89 Acts, ch 234, §1 HF 140  
Section amended

#### 12.32 Definitions.

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

1. “*Eligible borrower*” means any person who is in the business or is entering the business of producing, processing, or marketing horticultural crops or non-traditional crops in this state.

2. “*Eligible lending institution*” means a financial institution that is empowered to make commercial loans, is eligible pursuant to chapter 453 to be a depository of state funds, and agrees to participate in the linked investments for tomorrow program.

3. “*Linked investment*” means a certificate of deposit placed pursuant to this division by the treasurer of state with an eligible lending institution, at an interest rate not more than three percent below current market rates on the condition that the institution agrees to lend the value of the deposit, according to the investment agreement provided in section 12.37, to an eligible borrower at a rate not to exceed four percent above the rate paid on the certificate of deposit.

89 Acts, ch 234, §2 HF 140  
Subsections 2 and 3 amended and subsections rearranged to alphabetize

#### 12.33 Legislative findings and intent—purpose.

1. The general assembly finds the following:

a. That many horticultural operations throughout the state are experiencing economic stagnation or decline.

b. That high interest rates have caused potentially viable operations to cease or not expand in the area of horticultural or nontraditional crop production, processing, or marketing.

2. The linked investments for tomorrow program provided for in this division is intended to provide statewide availability of lower cost funds for lending purposes that will stimulate existing or encourage new businesses in the area of producing, processing, or marketing horticultural or nontraditional crops.

3. It is the public policy of the state through the linked investments for tomorrow program to create an availability of lower cost funds to inject needed

capital into the business of producing, processing, or marketing horticultural crops or nontraditional crops.

89 Acts, ch 234, §3 HF 140  
Subsections 2 and 3 amended

#### **12.34 Linked investments—limitations.**

1. The treasurer of state may invest up to ten percent of the balance of the state pooled money fund in certificates of deposit in eligible lending institutions pursuant to this division.

2. The treasurer shall adopt rules pursuant to chapter 17A to implement this division including, but not limited to, rules identifying horticultural crops and nontraditional crops for which the linked investments may be loaned.

89 Acts, ch 234, §4 HF 140  
Section amended

#### **12.35 Application.**

1. An eligible lending institution that desires to receive a linked investment shall accept and review applications for loans from eligible borrowers. The lending institution shall apply all usual lending standards to determine the credit worthiness of each eligible borrower. Loan applications shall be for the purchase or lease of land, machinery, equipment, seed, fertilizer, direct marketing facilities, or new or expanding processing facilities for horticultural crops or nontraditional crops. The maximum size of a loan is two hundred thousand dollars per borrower for a production loan and five hundred thousand dollars for processing or marketing facilities.

2. The eligible financial institution shall forward to the state treasurer a linked investment loan package in the form and manner as prescribed by the treasurer of state. The package shall include information required by the treasurer of state, including but not limited to the amount of the loan requested and the purpose of the loan. The institution shall certify that the applicant is an eligible borrower and shall certify the present borrowing rate applicable to the specific eligible borrower.

89 Acts, ch 234, §5 HF 140  
Section amended

#### **12.36 Actions by treasurer—agreement.**

1. The treasurer of state shall accept or reject a linked investment loan package or any portion of the package based on the type or terms of the loan involved.

2. Upon acceptance of the linked investment loan package or any portion of the package, the state treasurer shall place certificates of deposit with the eligible lending institution at a rate not more than three percent below the current market rate. When necessary, the treasurer may place certificates of deposit prior to acceptance of a linked investment loan package.

3. The eligible lending institution shall enter into an investment agreement with the treasurer of state, which shall include requirements necessary to carry out this division. The requirements shall reflect the market conditions prevailing in the eligible lending institution's lending area. The agreement may include a specification of the period of time in which the lending institution is to lend funds upon the placement of a linked investment, and shall include provisions for the certificates of deposit to be placed for one-year maturities that may be renewed for five additional one-year periods. Interest shall be paid at the times determined by the treasurer of state.

89 Acts, ch 234, §6 HF 140  
Section amended

#### **12.37 Loans.**

1. Upon the placement of a linked investment with an eligible lending institution, the institution is required to lend the funds to the eligible borrower

listed in the linked investment loan package and in accordance with the investment agreement. The loan shall be at a rate not more than four percent above the rate paid the treasurer by the financial institution. The eligible lending institution shall be required to submit a certification of compliance with this section in the form and manner as prescribed by the treasurer of state.

2. The treasurer of state shall take all steps necessary to implement the linked investments for tomorrow program and monitor compliance of eligible lending institutions and eligible borrowers.

89 Acts, ch 234, §7 HF 140  
Section amended

### **12.38 Reports.**

By February 1 of each year, the treasurer of state shall report on the linked investments for tomorrow program for the preceding calendar year to the governor, the speaker of the house of representatives, and the president of the senate. The speaker of the house shall transmit copies of this report to the chairs of the standing committees in the house which customarily consider legislation regarding agriculture and commerce, and the president of the senate shall transmit copies of this report to the chairs of the standing committees in the senate which customarily consider legislation regarding agriculture and commerce. The report shall set forth the linked investments made by the treasurer of state under the program during the year and shall include information regarding the nature, terms, and amounts of the loans upon which the linked investments were based and the eligible borrowers to which the loans were made.

89 Acts, ch 234, §8 HF 140  
Section amended

### **12.43 Targeted small business linked investments program created—definitions.**

The treasurer of state shall adopt rules to implement a targeted small business linked investments 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 15.102, subsection 5.

2. A linked investment shall only be approved in connection with a loan application for a targeted small business which has been certified pursuant to section 10A.104, subsection 8.

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.

4. The maximum size of a targeted small business loan is two hundred fifty thousand dollars per borrower.

89 Acts, ch 234, §9 HF 140  
Section amended

### **12.45 through 12.50 Reserved.**

#### MAIN STREET LINKED INVESTMENTS LOAN PROGRAM

### **12.51 Main street linked investments loan program.**

The treasurer of state shall adopt rules to implement a main street linked investments loan program to increase the availability of lower cost funds to stimulate building restorations or rehabilitations of historic buildings within the central business district of a city which is a certified local government, or in the Iowa main street program or, if enacted by the Seventy-third General Assembly, in the rural main street program.\* The rules shall include the following conditions:

1. Linked investment loans shall be limited to projects for a building restoration or rehabilitation located in the central business district whose boundaries are the same as the main street or rural main street or central business district of a city which is a certified local government project area.

2. Eligible borrowers are limited to the property owner, contract purchaser of record, or long-term lessee.

3. Loan applications under this program shall be for the restoration or rehabilitation of facades of buildings which are eligible or nominated or listed on the national register of historic places. Public buildings are excluded.

4. A facade restoration or rehabilitation must follow United States secretary of interior's standards for rehabilitation and guidelines for rehabilitating historic buildings.

5. The maximum loan amount under the main street linked investments loan program is fifty thousand dollars per project.

6. No more than one-third of the amount authorized in section 12.34 may be used for purposes of this section.

89 Acts, ch 234, §10 HF 140

\*See §99E.32(3z)

NEW section

### 12.52 Application process.

Applicants shall be certified as eligible for assistance prior to submitting applications to the treasurer of state for loans under the main street linked investment loan program. Administrative rules pursuant to chapter 17A shall be adopted jointly by the department of economic development and by the department of cultural affairs to require applicants to do the following:

1. Show evidence of preliminary design assistance from the Iowa main street program of the department of economic development or the state historic preservation office of the department of cultural affairs.

2. Show evidence of preliminary design review approval from the local design review committee.

3. Submit project plans and specifications prepared by an architect with historic preservation experience. The plans shall be submitted to a final design review board comprised of representatives of the state historic preservation office, the Iowa main street program, and one private sector architect selected jointly by the directors of the departments of economic development and cultural affairs. The treasurer of state or the treasurer of state's designee shall serve as an ad hoc member of the design review board. The design review board shall provide certification of eligible projects to the treasurer of state following the review.

89 Acts, ch 234, §11 HF 140

NEW section

### 12.53 through 12.60 Reserved.

#### STATE-SPONSORED CREDIT CARD

### 12.61 State-sponsored credit card.

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

a. "Financial institution" means a state bank as defined in section 524.103, subsection 19, a federally chartered state bank having its principal office within this state, a federally chartered credit union having its principal office within this state, a federally chartered savings and loan association having its principal office within the state, a credit union organized under chapter 533, an association incorporated or authorized to do business under chapter 534, or a trust company organized or incorporated under the laws of this state.

b. "Financial institution credit card" means a credit card that entitles the holder to make open-account purchases up to an approved amount and is issued through the agency of a financial institution.

c. *“Sponsoring entity”* means an entity that allows its name or logo to be used on a particular financial institution credit card in exchange for a fee from the credit card issuer.

2. The treasurer is authorized to participate in a financial institution credit card program for the benefit of the state. Within six months of May 27, 1989, the treasurer shall contact each financial institution to determine if:

a. The financial institution or its Iowa holding company or Iowa affiliate currently administers a credit card program.

b. The credit card program provides a fee or commission on retail sales to the sponsoring entity for the issuance and use of the credit card.

c. The credit card program would accept the state as a sponsoring entity.

If the treasurer determines that the state may be a sponsoring entity for a financial institution credit card, the treasurer shall negotiate the most favorable rate for the state’s fee by a credit card issuer. The state shall not offer a more favorable rate to any other credit card issuer. The rate must be expressed as a percentage of the gross sales from the use of the credit card. The proceeds of the fee shall be deposited in the Iowa resources enhancement and protection fund created under section 455A.18. The treasurer shall recommend a logo or design for the state-sponsored credit card indicating the use for which the revenues will be used.

In selecting a credit card issuer, the treasurer shall consider the issuer’s record of investments in the state, shall take into consideration credit card features which will enhance the promotion of the state-sponsored credit card including, but not limited to, favorable interest rates, annual fees, and other fees for using the card, and shall require that the card be available to any person who qualifies for a credit card. Upon entering into an agreement with the financial institution, the treasurer shall notify all state agencies then possessing a credit card to obtain the new state-sponsored credit card. The financial institution is authorized to solicit participation from state employees.

89 Acts, ch 236, §8 HF 769  
NEW section

## CHAPTER 13

### ATTORNEY GENERAL

#### 13.10 Physical criminal evidence—DNA profiling.

The attorney general shall adopt rules in consultation with the division of criminal investigation, department of public safety, for the purpose of classifying felonies and indictable misdemeanors which shall require the offender to submit a physical specimen for DNA profiling as a condition of probation, parole, or work release. Factors to be considered shall include the deterrent effect of DNA profiling, the likelihood of repeated violations, and the seriousness of the offense.

Upon appropriation or receipt of sufficient funds, the division of criminal investigation shall carry out DNA profiling of submitted physical specimens. The division may contract with private entities for DNA profiling. *“DNA profiling”* means the procedure established by the division of criminal investigation, department of public safety, for determining a person’s genetic identity.

89 Acts, ch 156, §1 SF 233  
NEW section

13.11 through 13.19 Reserved.

## LEGAL ASSISTANCE TO FARMERS

Sections 13.20 to 13.24 repealed July 1, 1990; 86 Acts, ch 1214, §29;  
89 Acts, ch 108, §1 SF 389 Legislative findings; 86 Acts, ch 1214, §1

**13.25 through 13.30 Reserved.**

## VICTIM ASSISTANCE PROGRAM

**13.31 Victim assistance program.**

A victim assistance program is established in the department of justice, which shall do all of the following:

1. Administer grants received under the federal Victims of Crime Act pursuant to Pub. L. No. 98-473, title 2, chapter 14, 42 U.S.C. §10601, as amended by the federal Children's Justice and Assistance Act, Pub. L. No. 99-401, 100 Stat. 903 (1986).
2. Administer the state crime victim reparation program as provided in chapter 912.
3. Administer the domestic abuse program provided in chapter 236.
4. Administer the family violence prevention and services grants pursuant to the federal Child Abuse Amendments of 1984, Pub. L. No. 98-457, 42 U.S.C. §10401.

89 Acts, ch 279, §1 HF 700  
NEW section

**CHAPTER 13B****PUBLIC DEFENDERS****13B.4 Duties and powers of state public defender.**

1. The state public defender shall coordinate the provision of legal representation of indigents under arrest or charged with a crime, on appeal in criminal cases, and on appeal in proceedings to obtain postconviction relief when ordered to do so by the district court in which the judgment or order was issued, and may provide for the representation of indigents in proceedings instituted pursuant to chapter 908, and shall not engage in the private practice of law. The state public defender may represent an indigent under arrest or charged with a crime at the discretion of the state public defender or upon the request of a local public defender.
2. The state public defender may contract with persons admitted to practice law in this state for the provision of legal services to indigents where there is no local public defender office in the area.

89 Acts, ch 51, §1 HF 699  
Section amended

**13B.8A Public defender property.**

1. Notwithstanding section 13B.8, subsection 4, public property referred to in subsection 2 in the custody of a person or agency referred to in subsection 3 shall not be property of the department of inspections and appeals, but shall be devoted for the use of the department of inspections and appeals in its course of business. The department of inspections and appeals shall only be responsible for maintenance contracts or contracts for purchase entered into by the department of inspections and appeals. Upon replacement of the property by the department of inspections and appeals, the property shall revert to the use of the appropriate county.

2. This section applies to the following property:

a. Books, accounts, and records that pertain to the operation of the public defender's offices.

b. Forms, materials, and supplies that are consumed in the usual course of business.

c. Tables, chairs, desks, lamps, curtains, window blinds, rugs and carpeting, flags and flag standards, pictures and other wall decorations, and other similar furnishings.

d. Typewriters, adding machines, desk calculators, cash registers and similar business machines, reproduction machines and equipment, microfiche projectors, tape recorders and associated equipment, microphones, amplifiers and speakers, film projectors and screens, overhead projectors, and similar personal property.

e. Filing cabinets, shelving, storage cabinets, and other property used for storage.

f. Books of statutes, books of ordinances, books of judicial decisions, and reference books, except those that are customarily held in a law library for use by the public.

g. All other personal property that is in use in the operation of the offices of the public defender.

3. This section applies to the following persons and agencies:

a. Offices of the public defender.

b. Persons who are employed by an office of the public defender.

4. Subsections 1 through 3 and 5 do not apply to electronic data storage equipment, commonly referred to as computers, or to computer terminals or any machinery, equipment, or supplies used in the operation of computers. Those counties providing computer services to the public defender shall continue to provide these services until the general assembly provides otherwise. The state shall reimburse these counties for the cost of providing these services. Each county providing computer services to an office of the public defender shall submit a bill for these services to the department of inspections and appeals at the end of each calendar quarter. Reimbursement shall be payable from funds appropriated to the department for operating expenses of the offices of the public defender and shall be paid within thirty days after receipt by the department of inspections and appeals of the quarterly billing.

5. Personal property of a type that is subject to subsections 1 through 3 shall be subject to the control of the offices of the public defender. The offices of the public defender may issue necessary orders to preserve the use of the property by the public defender. The offices of the public defender shall establish and maintain an inventory of property used by the offices of the public defender.

89 Acts, ch 321, §23 HF 779  
NEW section

### **13B.9 Powers and duties of local public defenders.**

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

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

b. Represent an indigent party, without fee and upon an order of the court, in child in need of assistance, family in need of assistance, delinquency, and termination of parental rights proceedings pursuant to chapter 232. The local public defender shall counsel and represent an indigent party in all proceedings pursuant to chapter 232 and prosecute before or after judgment any appeals or other remedies which the local public defender considers to be in the interest of justice unless the court appoints other counsel. The state public defender shall be

reimbursed by the counties for services rendered by employees of the local public defenders' offices under this subsection, pursuant to section 232.141.

c. Make an initial determination of indigence as required under section 815.9 prior to the initial arraignment or other initial court appearance.

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

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

3. The local public defender may appoint the number of assistant public defenders, clerks, investigators, stenographers, and other employees as approved by the state public defender. An assistant local public defender must be an attorney licensed to practice before the Iowa supreme court. Appointments shall be made in the manner prescribed by the state public defender.

89 Acts, ch 83, §4 SF 112  
Subsection 3 amended

### 13B.10 Determination of indigence.

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

2. A determination of indigence shall not be made except upon the basis of information contained in a detailed financial statement submitted by the person or by the person's parent, guardian, or custodian. The financial statement shall be in the form prescribed by the department. If a person is determined to be indigent and given legal assistance, the financial statement shall be filed in the person's court file and with the department.

3. A person who knowingly submits a false financial statement for the purpose of obtaining legal assistance at public expense commits a fraudulent practice. As used in this subsection "*legal assistance*" includes appointed counsel, transcripts, witness fees and expenses, and any other goods or services required by law to be provided to an indigent person at public expense.

4. The district court shall decide, based upon the financial statement and other relevant information, whether the person is indigent. A public defender may make a temporary determination of indigence prior to the initial arraignment or other initial court appearance.

89 Acts, ch 83, §5 SF 112  
Subsections 2 and 4 amended

### 13B.11 State appellate defender.

The state public defender shall appoint a state appellate defender who shall represent indigents on appeal in criminal cases and on appeal in proceedings to obtain postconviction relief when appointed to do so by the district court in which the judgment or order was issued, and may represent indigents in proceedings instituted pursuant to chapter 908 when required to do so by the state public defender, and shall not engage in the private practice of law.

89 Acts, ch 51, §2 HF 699  
NEW section

## CHAPTER 15

### DEPARTMENT OF ECONOMIC DEVELOPMENT

Department to recognize the value of health insurance benefit packages provided by employees in evaluating grant and loan requests; 89 Acts, ch 304, §409 SF 538

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

e. 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.

f. 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".

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

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

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

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

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

c. Promote an import substitution program to encourage the purchase of domestically produced Iowa goods by identifying and inventorying potential purchasers and the firms that can supply them, contacting the suppliers to

determine their interest and ability in meeting the potential demand, and making the buyers aware of the potential suppliers.

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

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

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

(1) Provide the mechanisms to promote and facilitate the coordination of management and technical assistance services to Iowa businesses and industries and to communities by the department, by the 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 financial assistance program established in section 15.247. The duties of the director under this paragraph include the following:

(1) The director, in conjunction with the director of the department of management, shall publicize the procurement 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 financial assistance program established in section 15.247 to targeted small businesses.

(3) When the director determines, or is notified by the head of another agency of state government, that a targeted small business is unable to perform 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.

(4) The director, in conjunction with the director of the department of management and jointly with the universities under the jurisdiction of the state board of regents, 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.

(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 financial assistance program established in section 15.247 during the preceding fiscal year. The director of the department of management shall assist in compiling the data to be included in the report. The report shall include the following information:

(a) The total dollar value and number of potential 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 section 10A.104, subsection 8.

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

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

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

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

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

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

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

h. In addition, the department 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. *Case management.* To provide case management assistance to low-income persons for the purpose of establishing or expanding small business ventures as provided in section 15.246.

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

a. Collect and assemble, or cause to have collected and assembled, all pertinent information available regarding the industrial, agricultural, and public and private recreation and tourism opportunities and possibilities of the state of Iowa,

including raw materials and products that may be produced from them; power and water resources; transportation facilities; available markets; the 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. The information shall also consider the changing composition of the Iowa family, the level of poverty among different age groups and different family structures in Iowa society, and the changing composition of the Iowa work force and the impact of those changes on Iowa families. The department shall work with the division of children, youth and families of the department of human rights in developing the information relating to the family.

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.

89 Acts, ch 258, §12 HF 686; 89 Acts, ch 196, §1 HF 272; 89 Acts, ch 209, §1 SF 88

1989 amendment striking former paragraph d of subsection 1 takes effect July 1, 1990; 89 Acts, ch 258, §12, 26 HF 686

Subsection 1, former paragraph d stricken and paragraphs e-h relettered as d-g

Subsection 2, paragraph b amended

Subsection 9, paragraph a amended

### **15.203 Agricultural products advisory council—duties.**

1. The department shall establish, in consultation with the department of agriculture and land stewardship, an agricultural products advisory council for the purpose of advising the two departments in relation to the promotion, marketing and export of agricultural commodities and value-added agricultural products processed in Iowa and for the purpose of assisting in the coordination of the respective agricultural marketing programs of the two departments. The council shall seek to promote the agricultural commodities and products of the state by providing advice in the development of and by monitoring the implementation of a program and plan which provide for the participation and cooperation of the two departments. The council shall consist of five members appointed by the secretary of agriculture, and five members appointed by the director, who are experienced in marketing or exporting agricultural commodities or products, financing the export of agricultural commodities or products, or adding value to and processing of agricultural products.

2. The department and the department of agriculture and land stewardship shall jointly develop a comprehensive five-year agricultural commodities and products promotion program for the state not later than January 15, 1990, which shall be submitted to the council for its review, consideration, and approval, and shall develop a comprehensive agricultural commodities and products promotion plan by April 1, 1990, and update the program and plan annually. The program

and any accompanying recommendations of the council and the departments shall be submitted to the governor and the general assembly. The program and plan shall include, but are not limited to, the following:

a. A review of the promotional or marketing programs of the department of agriculture and land stewardship, the implementation of the programs, and recommendations to improve the programs and their implementation.

b. A review of the promotional or marketing programs of the department of economic development, the implementation of the programs, and recommendations to improve the programs and their implementation.

c. A review of the promotional programs which the two departments can jointly administer and recommendations on the implementation of the programs.

d. A review of the current division of areas of agricultural products, including but not limited to processed or value-added products and agricultural commodities.

e. A review of the products and commodities promoted by the two departments individually or jointly and any recommendations for new programs for promotions of the products or commodities.

3. The agricultural products advisory council shall seek to maximize the resources of the programs of the two departments, eliminate the unnecessary duplication of efforts, and successfully promote the state's agricultural commodities and products.

4. The agricultural products advisory council shall evaluate the current role of the private sector in promoting and marketing agricultural commodities and products and make recommendations for the utilization of the private sector programs in the state agricultural products promotion plan.

5. The agricultural products advisory council may employ or contract with a consultant or specialist to assist in developing and implementing the program and plan of the departments and the council. In the event a promotion program and plan as set forth in subsection 2 are not adopted by the council by April 1, 1990, the council shall employ or contract with a consultant or specialist to assist in the development of a promotion program and plan.

89 Acts, ch 219, §1 HF 549  
Section amended

### **15.225 Iowa conservation corps established—programs.**

1. The Iowa conservation corps is established in this state. The objectives of the corps are to provide meaningful and productive public service jobs for the young, the unemployed, the handicapped, and the elderly. The corps shall provide opportunities in the areas of park maintenance and restoration, soil conservation, wildlife and land management, energy savings, community improvement projects, tourism, economic development, and work benefiting human service programs. The general assembly intends that participation in the corps will provide the participants with an opportunity to explore careers, gain work experience, and contribute to the general welfare of their communities and state. The corps shall provide the following programs:

a. A full-time public service employment and training program for young adults with a program emphasis on resource and wildlife conservation, public recreation, or related areas to be known as the "young adult program".

b. A public service employment program for disadvantaged and handicapped youth attending school to be known as the "in-school program".

c. A summer employment program for youth of all economic classifications to be known as the "summer youth program".

d. A youth volunteer program to be known as the "Iowa corps".

e. A program to encourage and promote meaningful and respectable employment of the elderly in conservation and outdoor recreation related fields to be known as the "green thumb program".

2. The department of economic development shall give priority to enrolling participants in the corps programs from areas of the state which will likely receive the greatest benefit from the employment and training activities of the corps. Work activities of the corps shall not replace existing maintenance or other full-time employment provided by a participating agency or private organization.

89 Acts, ch 28, §1 HF 375  
Subsection 1, paragraph d amended

### 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 “*Iowa corps*” 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.

89 Acts, ch 28, §2 HF 375  
Subsection 1, paragraph b amended

### 15.228 Emphasis and contributions.

The regulating authority shall require participating state agencies and other public and private entities which would benefit from a corps project under consideration to contribute at least thirty-five percent of the total project budget. The contribution may be in the form of cash, materials, or services. Materials and services shall be intended for the project and acceptable to the regulating authority. Minimum cash contributions shall be:

1. Not less than twenty-five percent of the total project budget for the “*young adult program*”. Cash contributions may be used to provide participation incentives described in section 15.230.

2. Not less than fifteen percent of the total project budget for the “*in-school*”, “*summer youth*”, and “*green thumb*” programs.

Student volunteer projects approved under the “*Iowa corps*” are exempt from the thirty-five percent matching requirement of this section.

89 Acts, ch 28, §3, 4 HF 375  
Subsection 2 amended  
NEW unnumbered paragraph

### 15.229 Account created.

The Iowa conservation corps account is established within the office of the treasurer of state to be administered by the director of the regulating authority. The account shall include all appropriations made to the programs administered by the corps, and may also include moneys contributed by a private individual or organization, or a public entity for the purpose of implementing corps programs

and projects. The regulating authority may establish an escrow account within the office of the treasurer of state for tuition payments to be made beyond the term of any fiscal year. Interest earned on moneys in the account shall be credited to the account.

89 Acts, ch 28, §5 HF 375  
Section amended

### **15.230 Incentives for the young adult program and Iowa corps.**

The regulating authority shall cooperate with colleges and universities and lending institutions throughout the state on the development of a system of academic credit, tuition grant, and deferred loan repayment incentives for young adults to enroll and complete one year's participation in the "young adult program" of the corps and students who complete one year's participation in the "Iowa corps". The regulating authority shall adopt rules under chapter 17A designed to implement any such incentive programs agreed upon.

89 Acts, ch 28, §6 HF 375  
Section amended

### **15.247 Targeted small business financial assistance program.**

1. As used in this section, "small business" and "targeted small business" mean the same as defined in section 15.102, subsections 4 and 5.

2. The department shall establish, contingent upon the availability of funds authorized for the program, a targeted small business financial assistance program, to provide for loans, loan guarantees, or grants to targeted small businesses. A targeted small business in any year shall receive under this program not more than twenty-five thousand dollars in a loan or grant, and not more than forty thousand dollars in a guarantee, or a combination of loans, grants, or guarantees. The program shall provide guarantees not to exceed seventy-five percent for loans made by qualified lenders. The department shall establish a financial assistance reserve account from funds provided for this program, from which any default on a guaranteed loan under this section shall be paid. In administering the program the department shall not guarantee loan values in excess of the amount credited to the reserve account and only moneys set aside in the loan reserve account may be used for the payment of a default.

3. All moneys designated for the targeted small business financial assistance program shall be credited to the financial assistance reserve account. The department shall also establish an administrative account from which the operating costs of the program shall be paid. The department may transfer moneys between the reserve and the administrative accounts except that not more than twenty-five percent of the moneys shall be used to administer the fund. The department shall determine the actuarially sound reserve requirement for the amount of guaranteed loans outstanding.

4. The department shall adopt rules as necessary for the administration of the financial assistance program under this section.

5. The general assembly is not obligated to appropriate moneys to pay for any defaults or to appropriate moneys to be credited to the loan reserve account. The loan guarantee program does not obligate the state except to the extent provided in this section, and the department in administering the program shall not give or lend the credit of the state of Iowa.

89 Acts, ch 83, §6 SF 112  
Subsection 3 amended

### **15.251 Coordination with vocational education.**

1. Under the terms of section 123 of the Job Training Partnership Act of 1982, Pub. L. No. 97-300, the department and the department of education shall enter into a cooperative agreement as a condition to providing funds under that section.

2. The department may charge, within thirty days following the sale of certificates under chapter 280B, the board of directors of the merged area a fee of up to one percent of the gross sale amount of the certificates issued. The amount of this fee shall be deposited into the jobs now account within the Iowa plan fund for economic development created in section 99E.10 and may be used by the department to cover the costs of management of chapter 280B and to support other efforts by the merged area schools related to providing productivity and quality enhancement training. Funds deposited under this subsection into the jobs now account during a fiscal year which are not expended by the department in that fiscal year are available for use by the department under this subsection for subsequent fiscal years.

3. In order to finance the equipment purchases needed by the merged area schools to support the activities, the merged area schools may use a portion of their share of the equipment funds appropriated to them under section 99E.31, subsection 5, paragraph "c", or section 99E.32, subsection 5, paragraph "a".

89 Acts, ch 270, §1 HF 706  
Section stricken and rewritten

### 15.252 Rules.

The department shall adopt rules pursuant to chapter 17A to implement this part.

89 Acts, ch 270, §2 HF 706  
Section stricken and rewritten

**15.253 through 15.256** Repealed by 89 Acts, ch 270, §3. See §15.251 and 15.252. HF 706

**15.257** Repealed by 89 Acts, ch 270, §3 HF 706; 89 Acts, ch 83, §87 SF 112

### 15.273 Cooperative tourism program.

The department shall assist the department of natural resources in promoting the state parks, state recreation areas, lakes, rivers, and streams under the jurisdiction of the natural resource commission for tourism purposes. The department of natural resources shall provide the department with brochures and other printed information concerning hunting and fishing opportunities, recreational opportunities in state parks and recreation areas, and other natural and historic information of interest to tourists.

The department shall disseminate the brochures and other information provided by the department of natural resources through the welcome centers, sports and vacation shows, direct information requests, and other programs implemented by the department to promote tourism and related forms of economic development in this state.

89 Acts, ch 236, §9 HF 769  
NEW section

**15.274 through 15.280** Reserved.

### 15.281 Rural community 2000 program.

This part shall be known as the "*Rural Community 2000 Program*".

89 Acts, ch 301, §1 HF 703  
Section amended

### 15.282 Purpose.

The purpose of this part is to assist communities and rural areas of the state with their development and governmental responsibilities by providing low-interest and no-interest loans or grants for traditional infrastructure, new infrastructure, and housing.

89 Acts, ch 301, §2 HF 703  
Section amended

### 15.283 Program.

The department shall establish a program to effectuate the purposes of this part subject to the following guidelines:

1. General program criteria and applications are to be developed by the finance division of the department in conjunction with the Iowa finance authority, subject to approval of the boards of the department and Iowa finance authority.

2. The program shall provide for three categories of assistance. These are the traditional infrastructure category, the new infrastructure category, and the housing category.

3. All moneys available for the traditional infrastructure category and the new infrastructure category shall be administered by the department. All moneys available for the housing category shall be administered by the Iowa finance authority.

4. Moneys available under this program shall be allocated so that at least fifty-five percent of the moneys are for the traditional infrastructure category, at least fifteen percent of the moneys are for the new infrastructure category, and thirty percent of the moneys are for the housing category. If moneys allocated to the housing category are not used or dedicated by January 1 of the fiscal year, the moneys shall be reallocated to the other categories that have the most need as determined by the department. At least one-third of the moneys allocated to each category shall be set aside for cities with populations of five thousand or less. For purposes of this set-aside, a city located in a county with a population in excess of three hundred thousand, if the city is contiguous to another city in the county and that other city is contiguous to the largest city in that county, shall be considered as having a population in excess of five thousand.

5. The department may establish an interest or principal payment program to pay up to all the interest or an amount of principal equal to the total interest amount due on municipal bonds sold by the local community as authorized by this section. The department may use part or all of the moneys available for traditional or new infrastructure assistance for the interest or principal payment program. The program shall only be available to communities which demonstrate a substantial local effort to assist in community development. The department shall develop rules defining "*substantial local effort*".

6. Notwithstanding subsection 4, for the fiscal year beginning July 1, 1989, all funds allocated under this program for housing shall be applied to programs under section 220.100, subsection 2, paragraphs "b" and "c".

89 Acts, ch 83, §7 SF 112; 89 Acts, ch 301, §3 HF 703

Subsection 4 amended  
NEW subsections 5 and 6

### 15.284 Traditional infrastructure.

1. The traditional infrastructure category contains projects that include, but are not limited to, sewer, water, roads, bridges, airports, and other projects described in section 384.24, subsection 3.

2. Any Iowa city or county is eligible to apply for loans or grants from this category. Along with the application, the city or county shall submit the following:

- a. A needs assessment study.
- b. A capital improvement program.
- c. Evidence of matching contribution of at least twenty-five percent of the total project cost.

3. Applications must be seeking funds to improve the physical assets of the traditional infrastructure of the political subdivision in aid of development.

4. The finance division of the department shall rank the applicants according to financial need, cost-benefit of the project, percent of match, impact, and ability to administer project.

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

6. The department may coordinate with the department of natural resources to assist political subdivisions receiving federal or other state aid for waste water treatment facilities. However, the department shall not allocate more than fifty percent of the moneys available to this category for this purpose.

89 Acts, ch 301, §4, 5 HF 703  
Subsection 2, unnumbered paragraph 1 amended  
Subsection 5 amended

### **15.285 New infrastructure.**

1. The new infrastructure category contains projects which are services or processes that do not currently meet the guidelines of standard public works projects. These include, but are not limited to, communication systems, day care, technology transfer adaptation, medical decision-support systems, special transportation services, physical improvements under town square and main street programs, physical improvements to historic, art, and cultural sites and attractions, emergency medical services, speculative shell buildings built by a local community development organization, and other projects described in section 384.24, subsection 4.

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

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

- a. A needs assessment study.
- b. A capital improvement plan.
- c. Evidence of a match of at least ten percent.

4. The finance division of the department shall rank the applications according to the applicant's financial need, cost-benefit of the project, current conditions or situations, percent of private investment or contribution, and ability to administer the project.

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

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

89 Acts, ch 199, §1 SF 466; 89 Acts, ch 301, §6-8 HF 703  
Subsections 1, 2, and 5 amended  
NEW subsection 6

### **15.286 Housing.**

1. Any Iowa city, county, housing agency, or developer shall be eligible to apply for loans or grants under this category. Along with the application the person shall submit the following:

- a. A needs assessment for the area to be served.
- b. A demographic documentation of the housing trend.
- c. Evidence of a local commitment of at least twenty-five percent.

2. Applicants must be seeking funds to assist in meeting the area needs of lower and very low income families in pursuit of decent housing or in meeting the purposes of the housing trust fund program as described in section 220.100, subsection 2.

3. For purposes of this section:

a. “*Lower income families*” means lower income families as defined in section 220.1, subsection 3.

b. “*Very low income families*” means very low income families as defined in section 220.1, subsection 4.

4. a. The Iowa finance authority shall develop criteria to award assistance based upon the applicant’s financial need, the cost-benefit of the project, the accessibility to the project by handicapped persons as defined in section 321L.1, percent of private investment, percent leveraged by other programs, assessment of local housing situation, and ability to administer the program.

b. The Iowa finance authority shall give a preference in the awarding of assistance as follows:

(1) Assistance that will be used to meet the purposes of the housing trust fund program.

(2) An applicant that is a nonprofit entity.

(3) Programs to assist lower income, the disadvantaged, or the disabled.

(4) A project that will qualify for the low-income housing credit under section 42 of the Internal Revenue Code, as defined in section 422.3.

(5) A project that will not otherwise qualify for the low-income housing credit but will provide an income mix of the residents as described in section 42(g)(1)(A) or (B) of the Internal Revenue Code, as defined in section 422.3.

(6) A project involving a community development corporation or financial institution participating in a federal or state community reinvestment program.

5. Interest charged to applicants for a loan, may range from zero to five percent. The Iowa finance authority may charge applicants an administration fee, not to exceed one percent of the principal amount of the loan or grant, to be paid as a lump sum percent.

6. A housing project which receives funds under the rural community 2000 program, for the portion of the project receiving funding under the rural community 2000 program shall provide, as nearly as practical, that twenty-five percent of the housing units, as nearly as practical, be available for very low income families and seventy-five percent of the housing units be available for lower income families.

89 Acts, ch 83, §8, 9 SF 112; 89 Acts, ch 247, §1 HF 745; 89 Acts, ch 301, §9-15 HF 703  
 Subsection 1, unnumbered paragraph 1 amended  
 Subsection 2 amended  
 Subsection 3 stricken and rewritten  
 Subsection 4, paragraph a amended  
 Subsection 4, paragraph b amended  
 Subsection 4, paragraph b, NEW subparagraph (6)  
 Subsection 5 amended  
 NEW subsection 6

### **15.287 Revolving fund.**

The Iowa finance authority shall establish a revolving fund for the program and shall transfer to the department moneys to be administered by the department. The moneys in the revolving fund are appropriated for purposes of the program. Notwithstanding section 8.33, moneys in the fund at the end of a fiscal year shall not revert to any other fund but shall remain in the revolving fund. The fund shall consist of all appropriations, grants, or gifts received by the authority or the department specifically for use under this part; revenues designated in section 98.35\* to be deposited in the fund; and all repayments of loans or grants made under this part.

89 Acts, ch 301, §16 HF 703  
 \*1989 amendment to §98.35 item vetoed; 89 Acts, ch 301, §18 HF 703  
 Section amended

### **15.288 Local bonds not required—indebtedness limitations.**

A city, county, political subdivision, or other municipal corporation shall not be required to issue its bonds to secure loans or grants under the rural community

2000 program. It is the intent of the general assembly that loans or grants received by a city, county, political subdivision, or other municipal corporation under the program shall not constitute an indebtedness of that entity within the meaning of any state constitutional provision or statutory limitation. A city, county, political subdivision, or other municipal corporation, may repay a loan received through a state funded program by a tax levied for a debt service fund under sections 331.430, subsection 2, and 384.4, subsection 2.

89 Acts, ch 301, §17 HF 703  
Section amended

## 15.289 and 15.290 Reserved.

### PART 9

Legislative fiscal bureau to evaluate retraining programs, report to legislative council at council's first meeting after July 1, 1991; 89 Acts, ch 220, §9 HF 550

## 15.291 Definitions.

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

1. *"Agreement"* means a written contract between the department and a participating business which provides for the retraining of participating workers in a retraining program approved by the department.

2. *"Applicant"* means a business or group of businesses submitting an application for approval by the department.

3. *"Area school"* means a vocational school or a community college established under chapter 280A.

4. *"Business"* means a commercial enterprise engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate or intrastate commerce, but excludes retail, health, or professional services. *"Business"* does not include a commercial enterprise which closes or substantially reduces its operation in one area of this state and relocates substantially the same operation in another area of this state, but does include a commercial enterprise expanding its operations in another area of this state provided that existing operations of a similar nature are not closed or substantially reduced.

5. *"Business production site"* means a facility in which a business operates the means to manufacture, process, or assemble products or conduct research, or a center which provides services in intrastate or interstate commerce, excluding retail, health, or professional services.

6. *"Department"* means the Iowa department of economic development.

7. *"Fund"* means the Iowa employment retraining fund established under section 15.298.

8. *"Job quality"* means the value of an employment position to a business based on consideration of factors, including but not limited to the following:

a. The dollar value of annual wages and benefits that a worker beginning in the position earns.

b. Whether the employment position is a permanent full-time, permanent part-time, temporary full-time, or temporary part-time position. If the position is other than permanent full-time, consideration of the value of the position shall include the number of hours demanded from the position each year.

c. The number of times in the last three years that the position has been occupied.

d. The number and type of similar employment positions in the area in which the business would reasonably employ workers.

9. *"Participating business"* means one or more existing businesses which are parties to an agreement as provided in section 15.296.

10. “*Participating worker*” means a person who prior to being accepted into a retraining program is an employee of the participating business and who the department determines is substantially at risk of becoming displaced within the following ten years, due to the retooling of the business.

11. “*Person*” means a natural person.

12. “*Retooling*” means upgrading, modernizing, or expanding a business to increase the production or efficiency of business operations, including replacing equipment, introducing new manufacturing processes, or changing managerial procedures.

13. “*Retraining*” means the process designed to instruct participating workers in skills related to the retooled operation of the participating business and includes any of the following skills:

a. Basic academic skills, including fundamental skills of reading, computation of numbers, and written and verbal communication required to successfully function in the workplace.

b. Job specific skills, including skills required to perform tasks of a specific employment position or cluster of employment positions.

14. “*Retraining agency*” means an area school, or other public educational facility, private entity, or organization which provides retraining to workers.

15. “*Retraining program*” means a program for retraining participating workers, including a program established pursuant to section 15.297.

89 Acts, ch 220, §1 HF 550  
NEW section

### 15.292 Legislative findings.

The general assembly finds and declares the following:

1. The rapid retooling of Iowa businesses, including the dramatic introduction of new, highly technical manufacturing processes into Iowa industry, has contributed to increasing unemployment in the state by reducing the demand for unskilled and underskilled labor and making traditionally marketable job skills obsolete.

2. Corresponding to the increase in the number of workers displaced by the retooling of businesses, there is an increasing demand by those businesses for workers to be trained to perform new technical functions.

3. The mismatch between available labor and the needs of businesses harms the economic revitalization of the state by retarding the production and efficiency of retooling businesses, draining employer-taxed contributions to the unemployment compensation fund, diverting state public assistance resources to support displaced workers, and stifling a sense of self-worth and economic independence of affected persons.

4. The state finds it advantageous to establish an employment retraining fund administered to remedy structural imbalances in the job market and to assist employers and employees by fostering business expansion and job creation, minimizing unemployment costs to businesses, diversifying the state’s economic base, supplying businesses with an available pool of workers trained to perform demand skills, providing Iowans permanent jobs, increasing the flexibility in the skills of workers, minimizing public assistance payments to displaced workers, and encouraging in affected persons a sense of self-worth and economic independence.

5. Expenditures from the Iowa employment retraining fund used to support retraining programs shall supplement financial assistance available through other state and federal programs. In addition, assistance under employment retraining programs shall not be used to replace, parallel, supplant, compete with,

or duplicate assistance provided under other training programs sponsored by an employer, the state, or the federal government.

89 Acts, ch 220, §2 HF 550  
NEW section

### **15.293 Duties and powers of the Iowa department of economic development.**

The department shall:

1. Approve, deny, or defer applications for retraining assistance and enter into retraining agreements, as provided in this chapter.
2. Refer a business seeking assistance to the area school serving the merged area in which the business proposes to retrain workers.
3. Establish minimum standards for considering applications, based on the contents of the application and selection criteria as provided in section 15.295.
4. Collect, design, and evaluate model retraining programs to assist businesses in retraining workers, and award forgivable loans, loans, grants, or a combination of loans and grants under these programs to participating businesses. To ensure the accountability of the business, before providing a grant, the department shall consider the feasibility of providing a forgivable loan.
5. Provide for the collection of loans, including interest on the loans, from participating businesses. The department shall provide for the deposit of loan repayments into the fund.
6. Administer the fund and supervise all accounting and auditing procedures related to the fund in accordance with generally accepted accounting principles.
7. Monitor retraining programs, including the supervision of the accounting and auditing of retraining program funds, to assist participating businesses.
8. Cooperate with other state and federal entities involved in worker training programs, including the department of employment services and the department of education.
9. Assess the extended impact of this chapter, in conjunction with the department of employment services, department of human services, and department of education, upon economic development in the state, including effects of retraining programs upon the unemployment rate, public assistance payments, business closings, business expansions, and the migration of workers out of and into the state.
10. Report to the governor and legislative council before the beginning of each session of the general assembly the following items:
  - a. The status of programs administered under this chapter.
  - b. The extended impact of this chapter upon economic development in the state, as required in subsection 9.
11. Adopt administrative rules pursuant to chapter 17A to implement and administer this chapter.

89 Acts, ch 220, §3 HF 550  
NEW section

### **15.294 Retraining application.**

1. A business may apply for retraining assistance under this chapter by completing an application under the supervision of the area school serving the merged area in which the business proposes to retrain workers. The area school shall provide the applicant with all assistance necessary in completing the application. The area school shall submit the completed application on behalf of the business. The application shall be on forms provided by the department. Applications shall be submitted pursuant to rules adopted by the department.
2. The application shall contain business information regarding the business. Information which the business believes contains trade secrets, would give an advantage to competitors, or meets other conditions for confidential treatment as

provided in section 22.7, shall be kept confidential. Business information shall be described by rules adopted by the department and shall relate to state or federal programs under which the business has applied for training assistance, the impact of implementing the applicant's retraining proposal on competing businesses in the state, the employees of the business and their employment positions, the financial condition of the business, the retooling operations in place or planned to be in place, the local union or affiliate representing the employees of the business, the type of goods or services to be produced by retooling, and any other information determined to be relevant by the department.

3. The application shall contain a retraining proposal. The contents of the proposal shall be described by rules adopted by the department and shall relate to the participating business and applicable business production site, the retraining agency to service the business, the participating workers, the jobs resulting from retraining, the program under which the business is applying for retraining assistance, the cost of retraining, the coordination of the training program with other state or federal training programs in which the business is involved, the system to monitor the retraining program, and any other item required to be included by the department.

4. The application may contain or the department may require an evaluation of the retraining proposal by the area school serving the merged area in which the retrained workers are to be employed. An evaluation shall contain pertinent information about the business, including the following:

- a. The results of an investigation of operations in the business.
- b. An assessment of the viability of the business.
- c. An assessment of the process for selecting the retraining entity.
- d. An evaluation of the value of the retraining agency.
- e. Recommendations of the value of the retraining proposal.
- f. A ratio comparing the total amount planned to be invested by the business in the actual costs of retraining to the amount of dollars being requested for retraining.
- g. Other information about the business relating to the selection criteria described in section 15.295.

89 Acts, ch 220, §4 HF 550  
NEW section

### **15.295 Approval of applications.**

1. The department, in reviewing an application, shall consider the contents of the application, including the business information and the retraining proposal.

2. The department shall approve, deny, or defer applications and award financial assistance based on selection criteria. The department shall score and rank the criteria according to the relative importance of the criteria. The importance assigned to each criterion shall be determined by the department. Approval, denial, or deferral of an application shall be based on, but not limited to, the following selection criteria:

a. The total amount of dollars which have been invested in the business for the previous three years to increase productivity or efficiency, including capital improvements in retooling.

b. The total amount of dollars planned to be invested in the business for the following three years to increase productivity or efficiency, including capital improvements in retooling.

c. A ratio comparing the total amount of dollars invested or to be invested pursuant to paragraphs "a" and "b" plus the amount of profit in dollars made by the business in the previous three years, to the amount of dollars proposed to assist the business in retraining.

d. A ratio comparing the total amount planned to be invested by the business in the actual costs of retraining to the amount of dollars being requested for

retraining. This ratio shall indicate that the business's investment amount is at least equal to the amount requested. If not the application shall be denied.

- e. The quality of jobs resulting from the retraining proposal.
  - f. The need of the proposed business for retraining assistance.
  - g. The number of businesses, contained in the training proposal, applying for combined assistance.
  - h. The endorsement of the labor union or affiliate which represents workers proposed to participate in retraining.
  - i. The degree to which the product made by the business's retooling operation is new, creates new market opportunities, or diversifies the state's economy.
  - j. The degree to which the business's retooling operation introduces new manufacturing processes into state industry.
  - k. The past performance of the proposed retraining agency in training persons, by considering the placement and retention of former trainees and employer satisfaction with former trainees.
  - l. The result of a cost-benefit analysis which measures the value of the proposed retraining based upon job-related calculations, including but not limited to, the number of participating workers in the proposal, the cost of retraining each worker, the dollar value of wages and benefits to be earned by each retrained worker, and the market demand for the proposed retraining.
  - m. The procedure to evaluate the proposed retraining program and collect data required to make the evaluation, based on a procedure which monitors the retraining program, including accounting and auditing systems adequate to ensure the accuracy and reliability of expenditures recorded by the business and related to the proposed retraining.
  - n. The feasibility of implementing the retraining proposal.
3. Each applicant shall be notified in writing, within the time period set by rules adopted by the department, of the department's final disposition of the application.

89 Acts, ch 220, §5 HF 550  
NEW section

### **15.296 Retraining agreements.**

The department shall execute agreements based on applications submitted to the department. Agreements shall be executed on forms provided by the department. Parties to an agreement shall include the department and the participating businesses named in the application's proposal, and may include any other entity approved by the department and named in the application, including a retraining agency or a labor union or affiliate representing participating workers.

89 Acts, ch 220, §6 HF 550  
NEW section

### **15.297 Retraining programs.**

1. The department shall establish retraining programs to provide retraining assistance to businesses. The assistance shall include financial assistance composed of grants, loans, forgivable loans, or a combination of grants and loans. However, financial assistance shall not include a grant or forgivable loan unless the result of retooling creates, at the business production site subject to the retooling, a net increase in the number of employment positions, a net increase in the quality of the employment positions held by participating workers, or a net increase in the wages paid to participating workers. The financial assistance awarded to a participating business must be based on the actual cost of retraining participating workers under the retraining program.

2. The department shall not provide more than fifty thousand dollars of financial assistance for a retraining proposal.

89 Acts, ch 220, §7 HF 550  
NEW section

### **15.298 Retraining fund.**

An Iowa employment retraining fund is created in the office of the treasurer of state to be administered by the department. The fund is a revolving fund consisting of funds appropriated to it, interest earned on appropriated funds, and moneys collected from the repayment of loans, including the interest from loans or from other sources. The moneys in the fund are appropriated to the department for the purpose of retraining workers in a retooled business.

The department shall set aside at the beginning of each fiscal year for that fiscal year the moneys in the fund for each merged area to be used to provide the financial assistance for retraining proposals of businesses located in the merged area whose applications have been approved by the department. The financial assistance shall be provided by the department from the amount set aside for that merged area. If any portion of the moneys set aside for a merged area have not been used or committed by March 1 of the fiscal year, that portion is available for use by the department to provide financial assistance to businesses located in other merged areas. The department shall adopt by rule a formula for this set aside based upon the population and per capita income of the merged area. The formula should be similar to the formula for the allocation of funds to merged areas for purchase of equipment from the jobs now capitals account of the lottery fund set out in 281 Iowa administrative code, rule 21.36 in effect on March 1, 1989.

89 Acts, ch 220, §8 HF 550  
NEW section

## **CHAPTER 17A**

### **ADMINISTRATIVE PROCEDURE ACT**

#### **17A.5 Filing and taking effect of rules.**

1. Each agency shall file in the office of the administrative rules co-ordinator three certified copies of each rule adopted by it. Two copies of each rule shall be forwarded to the Code editor by the administrative rules co-ordinator. The administrative rules co-ordinator shall keep a permanent register of the rules open to public inspection.

2. A rule adopted after July 1, 1975, is effective thirty-five days after filing, as required in this section, and indexing and publication in the Iowa administrative bulletin except that:

a. If a later date is required by statute or specified in the rule, the later date is the effective date.

b. Subject to applicable constitutional or statutory provisions, a rule becomes effective immediately upon filing with the administrative rules co-ordinator, or at a subsequent stated date prior to indexing and publication, or at a stated date less than thirty-five days after filing, indexing and publication, if the agency finds:

(1) That a statute so provides;

(2) That the rule confers a benefit or removes a restriction on the public or some segment thereof; or

(3) That this effective date is necessary because of imminent peril to the public health, safety or welfare. In any subsequent action contesting the effective date of a rule promulgated under this paragraph, the burden of proof shall be on the agency to justify its finding. The agency's finding and a brief statement of the

reasons therefor shall be filed with and made a part of the rule. Prior to indexing and publication, the agency shall make reasonable efforts to make known to the persons who may be affected by it a rule made effective under the terms of this paragraph.

89 Acts, ch 83, §10 SF 112  
Subsection 2, unnumbered paragraph 1 amended

### **17A.6 Publications.**

1. The Code editor shall cause the "Iowa Administrative Bulletin" to be published in pamphlet form at least every other week containing the following:

a. Notices of intended action and adopted rules prepared in such a manner so that the text of a proposed or adopted rule shows the text of any existing rule being changed and the change being made.

b. All proclamations and executive orders of the governor which are general and permanent in nature.

c. Other materials deemed fitting and proper by the administrative rules review committee.

2. Subject to the direction of the administrative rules co-ordinator, the Code editor shall cause the "Iowa Administrative Code" to be compiled, indexed, and published in loose-leaf form containing all rules adopted and filed by each agency. The Code editor further shall cause loose-leaf supplements to the Iowa administrative code to be published as determined by the administrative rules coordinator and the administrative rules review committee, containing all rules filed for publication in the prior time period. The supplements shall be in such form that they may be inserted in the appropriate places in the permanent compilation. The administrative rules co-ordinator shall devise a uniform numbering system for rules and may renumber rules before publication to conform with the system.

3. The Code editor may omit or cause to be omitted from the Iowa administrative code or bulletin any rule the publication of which would be unduly cumbersome, expensive or otherwise inexpedient, if the rule in printed or processed form is made available on application to the adopting agency at no more than its cost of reproduction, and if the Iowa administrative code or bulletin contains a notice stating the specific subject matter of the omitted rule and stating how a copy thereof may be obtained.

4. The Iowa administrative code, its supplements, and the Iowa administrative bulletin shall be made available upon request to all persons who subscribe to any of them through the state printing division. Copies of this code so made available shall be kept current by the division.

5. All expenses incurred by the Code editor under this section shall be defrayed under the provisions of section 14.22.

6. The Code editor, with the approval of the administrative rules review committee and the administrative rules coordinator, may delete a rule from the Iowa administrative code if the agency that adopted the rule has ceased to exist, no successor agency has jurisdiction over the rule, and no statutory authority exists supporting the rule.

89 Acts, ch 296, §4 SF 141  
Subsection 2 amended

### **17A.23 Construction.**

Except as expressly provided otherwise by this chapter or by another statute referring to this chapter by name, the rights created and the requirements imposed by this chapter shall be in addition to those created or imposed by every other statute in existence on July 1, 1975, or enacted after that date. If any other statute in existence on July 1, 1975, or enacted after that date diminishes a right conferred upon a person by this chapter or diminishes a requirement imposed upon an agency by this chapter, this chapter shall take precedence unless the

other statute expressly provides that it shall take precedence over all or some specified portion of this named chapter.

The Iowa administrative procedure Act shall be construed broadly to effectuate its purposes. This chapter shall also be construed to apply to all agencies not expressly exempted by this chapter or by another statute specifically referring to this chapter by name; and except as to proceedings in process on July 1, 1975, this chapter shall be construed to apply to all covered agency proceedings and all agency action not expressly exempted by this chapter or by another statute specifically referring to this chapter by name.

89 Acts, ch 83, §11 SF 112  
Unnumbered paragraph 1 amended

## 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 department 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 department 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.
10. Determining which risk exposures shall be self-insured or assumed by the state with respect to loss and loss exposures of state government.

89 Acts, ch 76, §1 HF 256  
NEW subsection 10

### **18.6 Competitive bidding—preferences—reciprocal application—direct purchasing.**

The director shall promulgate rules establishing competitive bidding procedures.

1. All equipment, supplies, or services procured by the department shall be purchased by a competitive bidding procedure. However, the director may exempt by regulation purchases of noncompetitive items and purchases in lots or quantities too small to be effectively purchased by competitive bidding. Preference shall be given to purchasing Iowa products and purchases from Iowa based businesses if the bids submitted therefor are comparable in price to bids submitted by out-of-state businesses and otherwise meet the required specifications. If the laws of another state mandate a percentage preference for businesses or products from that state and the effect of the preference is that bids of Iowa businesses or products that are otherwise low and responsive are not selected in the other state, the same percentage preference shall be applied to Iowa businesses and products when businesses or products from that other state are bid to supply Iowa requirements.
2. The director may also exempt the purchase of an item from a competitive bidding procedure when the director determines that the best interests of the state will be served due to an immediate or emergency need for the item.
3. The director shall have the power to contract for the purchase of items by the department. Contracts for the purchase of items shall be awarded on the basis of the lowest competent bid. Contracts not based on competitive bidding shall be awarded on the basis of bidder competence and reasonable price.
4. The director may refuse all bids on any item and institute a new bidding procedure.
5. The director shall establish by regulation the amount of security, if any, to accompany a bid or as a condition precedent to the awarding of any contract and the circumstances under which a security will be returned to the bidder or forfeited to the state.

6. The director shall promulgate rules providing a method for the various state agencies to file with the department of general services a list of those supplies, equipment, machines, and all items needed to properly perform their governmental duties and functions.

7. The director shall furnish a list of specifications, prices, and discounts of contract items to any governmental subdivision which shall be responsible for payment to the vendor under the terms and conditions outlined in the state contract.

8. The director shall establish rules providing that any state agency may, upon request, purchase directly from a vendor if the direct purchasing is as economical or more economical than purchasing through the department, or upon a showing that direct purchasing by the state agency would be in the best interests of the state due to an immediate or emergency need.

Any member of the executive council may bring before the council for review a decision of the director granting a state agency request for direct purchasing. The executive council shall hear and review the director's decision in the same manner as an appeal filed by an aggrieved bidder, except that the three-day period for filing for review shall not apply.

9. When the estimated total cost of construction, erection, demolition, alteration or repair of a public improvement exceeds twenty-five thousand dollars, the department shall advertise for bids on the proposed improvement by two publications in a newspaper published in the county in which the work is to be done. The first advertisement for bids shall be not less than fifteen days prior to the date set for receiving bids. The department shall let the work to the lowest responsible bidder submitting a sealed proposal. However, if the department considers the bids received not to be acceptable, all bids may be rejected and new bids requested. A bid shall be accompanied, in a separate envelope, by a deposit of money or a certified check or credit union certified share draft in an amount to be named in the advertisement for bids as security that the bidder will enter into a contract for the doing of the work. The department shall fix the bid security in an amount equal to at least five percent, but not more than ten percent of the estimated total cost of the work. The checks, share drafts or deposits of money of the unsuccessful bidders shall be returned as soon as the successful bidder is determined, and the check, share draft or deposit of money of the successful bidder shall be returned upon execution of the contract documents. This section does not apply to the construction, erection, demolition, alteration or repair of a public improvement when the contracting procedure for the doing of the work is provided for in another provision of law.

10. The state and its political subdivisions shall give preference to purchasing Iowa products and purchasing from Iowa based businesses if the bids submitted are comparable in price to those submitted by other bidders and meet the required specifications.

11. The director shall adopt rules which require that each bid received for the purchase of items purchased by the department includes a product content statement which provides the percentage of the content of the item which is reclaimed material.

12. The director shall require that as a condition of a contract for the purchase of items by the department, the person submitting the proposed contract for purchase of items shall receive information regarding the availability of an on-site, nonregulatory, review of waste management of the facility of the person submitting the proposed contract by the small business assistance center for the safe and economic management of solid waste and hazardous substances at the university of northern Iowa.

13. The director shall review and, where necessary, revise specifications used by state agencies to procure products including but not limited to lubricating oils,

retread tires, building insulation materials, and recovered materials from waste tires to ensure that the specifications allow the procurement of items containing recovered materials. Specifications shall be revised if they restrict the use of alternative materials, exclude recovered materials, or require performance standards which exclude items containing recovered materials unless the agency seeking the item can document that the use of recovered materials will hamper the intended use of the item.

89 Acts, ch 272, §19 HF 753  
NEW subsections 11-13

### **18.7 Appeal.**

A bidder whose bid is timely filed, and who is aggrieved by the award of the purchasing division of the department, may appeal the decision to the director by filing a written appeal stating the grounds for appeal, and delivering the appeal to the department within five days after receipt of the "notice of intent to award", exclusive of Saturdays, Sundays, and legal holidays. The director shall conduct a hearing and determine the appeal within twenty days after the appeal is filed. The decision of the director is final.

Disputes arising between the department of corrections and a purchasing department or agency over the procurement of products from Iowa state industries as described in section 246.808 shall be referred to the director. The decision of the director is final unless a written appeal is filed with the executive council within five days of receipt of the decision of the director, excluding Saturdays, Sundays, and legal holidays. If an appeal is filed, the executive council shall hear and determine the appeal within thirty days. The decision of the executive council is final.

89 Acts, ch 61, §1 SF 482  
Section stricken and rewritten

### **18.12 Duties—state property—employees—reports—lease-purchase—appropriation.**

In addition to other duties the director shall:

1. See that all visitors, at proper hours, are properly escorted over capitol grounds and capitol buildings, free of expense.

2. Have at all times, charge of and supervision over the janitors, and other employees of the department in and about the capitol and other state buildings, except the buildings and grounds referred to in section 601L.3, subsection 6, at the seat of government.

3. Institute, in the name of the state, and with the advice and consent of the attorney general, civil and criminal proceedings against any person for injury or threatened injury to any public property 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. On behalf of the department, enter into lease-purchase contracts for real or personal property, wherever located within the state, to be used for buildings, facilities, and structures, or for additions or improvements to existing buildings, facilities, and structures, to carry out the provisions of this chapter or for the proper use and benefit of the state and its state agencies on the following terms and conditions:

a. The director shall coordinate the location, design, plans and specifications, construction, and ultimate use of the real or personal property lease-purchased with the state agency for whose benefit and use the property is being obtained and the terms and conditions of the lease-purchase contract with both the state agency for whose benefit and use the property is being obtained and the treasurer of state. Upon awarding the contract for construction of a building or for site development, the director shall have sole authority to administer the contract.

b. The lease-purchase contract may provide for ultimate ownership of the property by the state. Title to all property acquired in this manner shall be taken and held in the name of the state. The state shall be the lessee or contracting party under all lease-purchase contracts entered into pursuant to this chapter. The lease-purchase contract may contain provisions similar to provisions customarily found in lease-purchase contracts between private persons, including, but not limited to, provisions prohibiting the acquisition or use by the lessee of competing property or property in substitution for the lease-purchased property, obligating the lessee to pay costs of operation, maintenance, insurance, and taxes relating to the property, and permitting the lessor to retain a security interest in the property lease-purchased, until title passes to the state, which may be assigned or pledged by the lessor. The director may contract for additional security or liquidity for a lease-purchase contract and may enter into agreements for letters of credit, lines of credit, insurance, or other forms of security with respect

to rental and other payments due under a lease-purchase contract. Fees for the costs of additional security or liquidity are a cost of entering into the lease-purchase contract and may be paid from funds annually appropriated by the general assembly to the state agency for which the property is being obtained or from other funds legally available. The lease-purchase contract may include the costs of entering into the lease-purchase contract as a cost of the lease-purchased property. The provision of a lease-purchase contract which provides that a portion of the periodic rental payment be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 does not apply to lease-purchase contracts entered into pursuant to this chapter. Rental and other costs due under lease-purchase contracts entered into pursuant to this chapter shall be payable from funds annually appropriated by the general assembly to the state agency for which the property is being obtained or from other funds legally available.

c. A lease-purchase contract to which the state is a party is an obligation of a state for 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 other fiduciaries responsible for the investment of funds.

d. The director shall not enter into lease-purchase contracts pursuant to this chapter without prior authorization by a constitutional majority of each house of the general assembly and approval by the governor of the use, location, and maximum cost, not including interest expense, of the real or personal property to be lease-purchased. However, the director shall not enter into a lease-purchase contract for real or personal property which is to be constructed for use as a prison or prison-related facility without prior authorization by a constitutional majority of each house of the general assembly and approval by the governor of the use, location, and maximum cost, not including interest expense, of the real or personal property to be lease-purchased and with the construction in accordance with space needs as established by an independent study of space needs authorized by the general assembly.

e. A contract for acquisition, construction, erection, demolition, alteration, or repair by a private person of real or personal property to be lease-purchased by the director pursuant to this chapter is exempt from section 18.6, subsections 1 and 9, unless the lease-purchase contract is funded in advance by a deposit of the lessor's moneys to be administered by the director under a lease-purchase contract which requires rent payments to commence upon delivery of the lessor's moneys to the lessee.

This subsection provides an alternative and independent method for carrying out projects under this chapter and for entering into lease-purchase contracts in connection therewith, without reference to any other statute, and is not an amendment of or subject to the provision of any other law. No publication of any notice, whether under section 23.12 or otherwise, and no other or further proceedings with respect to the lease-purchase contracts is required except as set forth in this chapter, any provisions of other statutes of the state to the contrary notwithstanding.

For purposes of this subsection and subsection 12, "state agency" means a board, commission, bureau, division, office, department, or branch of state government.

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

The director shall notify each state agency provided space by the department to which an appropriation for the rental of that space has been made of the rental fee for the space. The fee shall be based on the cost of the space, services provided to the agency by the division of buildings and grounds, maintenance, utilities,

administration, and other property management costs. The state agency shall pay the fee to the department in the same manner as other expenses of the state agency are paid. Fees collected shall be deposited in the general fund of the state.

12. 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.

13. With the authorization of a constitutional majority of each house of the general assembly and approval by the governor, dispose of real property belonging to the state and its state agencies upon terms, conditions, and consideration as the director may recommend. If real estate subject to sale under this subsection has been purchased or acquired from appropriated funds, the proceeds of the sale shall be deposited with the treasurer of state and credited to the general fund of the state or other fund from which appropriated. There is appropriated from that same fund, with the prior approval of the executive council and in cooperation with the director, a sum equal to the proceeds so deposited and credited to the state agency to which the disposed property belonged or by which it was used, for purposes of the state agency.

14. Subject to the selection procedures of section 12.30, employ financial consultants, banks, insurers, underwriters, accountants, attorneys, and other advisors or consultants necessary to implement the provisions of subsection 10.

15. Prepare quarterly status reports for all ongoing capital projects of all state agencies, as capital project and state agency are defined in section 8.3A, \* and submit the status reports to the legislative capital projects committee.

16. Call upon any state agency, as defined in section 8.3A, for assistance the director may require in performing the director's duties under subsection 15 regarding capital project status reports. All state agencies, upon the request of the director and with the approval of the director of the department of management, shall assist the director and are authorized to make available to the director any existing studies, surveys, plans, data, and other materials in the possession of the state agencies which are relevant to the director's duties.

17. In carrying out the requirements of section 64.6, the state may purchase an individual or a blanket surety bond insuring the fidelity of state officers. The department may self-assume or self-insure fidelity exposures for state officials and employees. A state official is deemed to have furnished surety if the official has been covered by a program of insurance or self-insurance established by the department. To the extent possible, all bonded state employees shall be covered under one or more blanket bonds or position schedule bonds.

18. The management of state property loss exposures and state liability risk exposures shall be reviewed by the director for the capitol complex. Insurance coverage may include self-insurance or any type of insurance protection sold by insurers, including but not limited to, full coverage, partial coverage, coinsurance, reinsurance, and deductible insurance coverage.

19. Perform all other duties required by law.

89 Acts, ch 76, §2, 3 HF 256; 89 Acts, ch 298, §28 SF 546

Item veto applied to parts of new subsection 16

\*As a result of the governor's item veto, section 8.3A does not contain a complete definition of "capital project"; 89 Acts, ch 298, §4 SF 546

NEW subsections 15 and 16

NEW subsections 17 and 18 and former subsection 15 renumbered as 19

### **18.18 State purchases—recycled products—starch-based plastics and soybean-based inks.**

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

keeping with the schedule established in this subsection, soybean-based inks and starch-based plastics, including but not limited to starch-based plastic garbage can liners.

a. By July 1, 1989, a minimum of fifty percent of the purchases of inks which are used for newsprint printing services performed internally or contracted for by the department of general services shall be soybean-based.

b. By July 1, 1989, a minimum of fifteen percent of the purchases of garbage can liners made by the department of general services shall be starch-based plastic garbage can liners. The percentage purchased shall increase by five percent annually until fifty percent of the purchases of garbage can liners are purchases of starch-based plastic garbage can liners.

c. The department of general services shall report to the general assembly on January 1 of each year the plastic products which are regularly purchased by the department of general services for which starch-based product alternatives are available. The report shall also include the cost of the plastic products purchased and the cost of the starch-based product alternatives.

2. a. As used in this subsection, unless the context otherwise requires:

(1) "*Recycled paper*" means a paper product with not less than forty percent of its total weight consisting of postconsumer material and recovered paper material. At least ten percent of the total weight of recycled paper shall be postconsumer materials.

(2) "*Postconsumer material*" means only those products generated by a business or consumer which have served their intended end uses, and which have been separated or diverted from solid waste for the purposes of collection, recycling, and disposition.

(3) "*Recovered paper material*" means paper waste generated after the completion of the papermaking process, such as postconsumer material, envelope cuttings, bindery trimmings, printing waste, cutting and other converting waste, butt rolls and mill wrappers, obsolete inventories, and rejected unused stock. "*Recovered paper material*" does not mean fibrous waste generated during the manufacturing process such as fibers recovered from waste water, or trimmings of paper machine rolls; or fibrous by-products of harvesting, extractive, or woodcutting processes; or forest residue such as bark.

b. The department, in conjunction with recommendations made by the department of natural resources, shall purchase and use recycled printing and writing paper so that twenty-five percent by January 1, 1990, fifty percent by January 1, 1992, seventy-five percent by January 1, 1996, and ninety percent by January 1, 2000, of the volume of printing and writing paper purchased is recycled paper.

3. The department of general services, in conjunction with the department of natural resources, shall review the procurement specifications currently used by the state to eliminate, wherever possible, discrimination against the procurement of products manufactured with recovered materials, starch-based plastics, and soybean-based inks.

4. The department of natural resources shall assist the department of general services in locating suppliers of recycled products, starch-based plastics, and soybean-based inks and collecting data on recycled content, starch-based plastic, and soybean-based ink purchases.

5. 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, including but not limited to starch-based plastic products, compost materials, aggregate, solvents, soybean-based inks, and rubber products.

6. 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.

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

89 Acts, ch 272, §20 HF 753

NEW subsection 2 and former subsections 2-6 renumbered as 3-7

**18.19** Reserved.

**18.20 Wastepaper recycling program.**

The department in accordance with recommendations made by the department of natural resources shall require all state agencies to establish an agency wastepaper recycling program by January 1, 1990. The director shall adopt rules which require a state agency to develop a program to ensure the recycling of the wastepaper generated by the agency. Each agency shall submit a report to the general assembly meeting in January 1990, which includes a description of the program plan and the agency's efforts to use recycled products. All state employees shall practice conservation of paper materials.

For the purposes of this section, "agency waste paper" means wastepaper or wastepaper products generated by the agency.

The rules adopted by the director shall provide for the continuation of existing state agency contracts which provide for alternative waste management not including incineration or land burial of agency waste paper.

89 Acts, ch 272, §21 HF 753

NEW section

**18.21 Certain polystyrene products—recycling—prohibition.**

The department of general services shall comply with the recycling goal, recycling schedule, and ultimate termination of the purchase and use of polystyrene products for the purpose of storing, packaging, or serving food for immediate consumption pursuant to section 455D.16.

89 Acts, ch 272, §22 HF 753

NEW section

**18.22 through 18.25** Reserved.

**18.115 Vehicle dispatcher—employees—powers and duties.**

The director of the department of general services shall appoint a state vehicle dispatcher and other employees as necessary to administer this division. The state vehicle dispatcher shall serve at the pleasure of the director and is not governed by the merit system provisions of chapter 19A. Subject to the approval of the director, the state vehicle dispatcher has 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 department for the blind, 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.

In conjunction with the requirements of section 18.3, subsection 1, effective January 1, 1990, the state vehicle dispatcher, and any other state agency purchasing motor vehicles for other than law enforcement purposes, shall each year purchase new passenger automobiles such that the average fuel efficiency for the fleet of new passenger automobiles purchased in that year by the state vehicle dispatcher is not less than two miles per gallon under the average fuel economy standard for the automobiles' model year as established by the United States secretary of transportation under 15 U.S.C. §2002. This paragraph does not apply to automobiles purchased for law enforcement purposes. The group of comparable automobiles within the total fleet purchased by the state vehicle dispatcher, or any other state agency purchasing motor vehicles for other than law enforcement purposes, shall have an average fuel efficiency rating not less than two miles per gallon under the average fuel economy rating for that model year for that class of comparable automobiles as defined in 40 C.F.R. §315-82. As used in this paragraph, "*fuel economy*" means the average number of miles traveled by an automobile per gallon of gasoline consumed as determined by the United States environmental protection agency administrator in accordance with 26 U.S.C. §4064(c).

The state vehicle dispatcher shall annually report the average combined fuel economy for all new motor vehicles purchased by classification (passenger automobiles, enforcement automobiles, vans, and light trucks) no later than January 31 of each year to the department of management and the energy and geological resources division of the department of natural resources. As used in this paragraph, "*combined fuel economy*" means the combined fuel economy as defined in 40 C.F.R. §600.002.

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 commissioner 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 commissioner 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.

10. The state vehicle dispatcher is responsible for insuring motor vehicles owned by the state. Insurance coverage may be through a self-insurance program administered by the division or purchased from an insurer. If the determination is made to utilize a self-insurance program the vehicle dispatcher shall maintain loss and exposure data for the vehicles under the dispatcher's jurisdiction. Each agency shall provide to the division all requested motor vehicle loss and loss exposure information.

89 Acts, ch 76, §4 HF 256; 89 Acts, ch 297, §1 SF 419  
Subsection 4, NEW unnumbered paragraphs 2 and 3  
NEW subsection 10

### 18.133 Definitions.

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

1. "Director" means the director of the department of general services or the director's designee.

2. "Private agency" means accredited nonpublic schools and nonprofit institutions of higher education eligible for tuition grants.

3. "Public agency" means a state agency, a school corporation, a city library, a regional library as provided in chapter 303B, and a county library as provided in chapter 358B.

4. "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.

89 Acts, ch 319, §31 HF 774  
NEW subsections 2 and 3

### **18.134 Powers—facilities—leases.**

1. The department of general services may purchase, lease-purchase, lease, and improve property, equipment, and services for telecommunications for public and private agencies, including the broadcast and narrowcast systems, and may dispose of property and equipment when not necessary for its purposes. However, the department of general services shall not provide or resell communications services to entities other than public and private agencies. The public or private agency shall not provide communication services of the network to another entity at a cost greater than that charged to the agency pursuant to section 18.136, subsections 10 and 11. The department may arrange for joint use of available services and facilities, and may enter into leases and agreements with private and public agencies with respect to a state communications system, and public agencies are authorized to enter into leases and agreements with respect to the system for their use and operation. Rentals and other amounts due under the agreements or leases entered into pursuant to this section by a state agency are payable from funds annually appropriated by the general assembly or from other funds legally available. Other public agencies may pay the rental costs and other amounts due under an agreement or lease from their annual budgeted funds or other funds legally available or to become available. This section comprises a complete and independent authorization and procedure for a public agency, with the approval of the department, to enter into a lease or agreement and related security enhancement arrangements and this section is not a qualification of any other powers which a public agency may possess and the authorizations and powers granted under this section are not subject to the terms, requirements, or limitations of any other provisions of law. All moneys received by the department from agreements and leases entered into pursuant to this section with private and public agencies shall be deposited in the state communications network fund.

It is the intent of the general assembly that rental and other costs due under agreements and leases entered into pursuant to this section by state agencies be replaced by supplemental appropriations to the state agencies.

2. 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 other than a school corporation, a city library, a regional library as provided in chapter 303B, and a county library as provided in chapter 358B. The rates charged to the political subdivision shall be the same as the rates charged to state agencies.

89 Acts, ch 319, §32 HF 774  
Section amended

### **18.136 State communications network.**

1. Moneys in the state communications network fund are appropriated to the Iowa public broadcasting board for purposes of providing financing for the

procurement, operation, and maintenance of a state communications network with sufficient capacity to serve the video, data, and voice requirements of state agencies and the educational telecommunications system. The state communications network consists of Part I, Part II, and Part III of the system.

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

a. "*Part I of the system*" means the communications connections between central switching and the regional switching centers for the remainder of the network.

b. "*Part II of the system*" means the communications connections between the regional switching centers and the secondary switching centers.

c. "*Part III of the system*" means the communications connection between the secondary switching centers and the agencies defined in section 18.133, subsections 3 and 4.

3. The financing for the procurement costs for the entirety of Part I of the system, and the video, data, and voice capacity for state agencies for Part II and Part III of the system, shall be provided by the state. The financing for the procurement costs for Part II of the system shall be provided eighty percent from the state and twenty percent from the area schools for the areas in which Part II of the system is located. The basis for the state match is eighty percent of a single interactive video and interactive audio for Parts I and II of the system, and such data and voice capacity as is necessary. The financing for the procurement and maintenance costs for Part III of the system shall be provided eighty percent from the state and twenty percent from the local school boards of the areas which receive transmissions from the system. The local school boards may meet all or part of the match requirements of Part III of the system through a cooperative arrangement with area schools. The basis for the state match is eighty percent of a single interactive audio and one-way video for Part III of the system, and such data and voice capacity as is necessary. The local school boards and area schools may meet the match requirements for Part II and Part III of the system from funds they have already spent for their systems, from funds available in the school budget, or from funds received from other nonstate sources. In the case of existing systems, in order to upgrade facilities to the specifications of the state communications network, the local school boards and area schools, in lieu of a cash match, may meet the match requirements from funds they have already spent for their systems provided that the state match does not exceed the lesser of eighty percent of the total cost of the upgraded system or eighty percent of the replacement cost of the system. The communications equipment used as a match shall not subsequently be used as a match by another educational entity or for another part of the system. A local school board may request the school budget review committee to adjust the allowable growth for the school district so that the resulting increase in budget could be used for the match. A local school board may also elect not to become part of the system. Such election shall be made on an annual basis. State matching funds shall not be provided for Part III of the system until Part I and Part II of the system have been completed.

4. The department of general services shall develop the requests for proposals that are needed for a state communications network with sufficient capacity to serve the video, data, and voice requirements of state agencies and the educational telecommunications applications required by the Iowa public broadcasting board. The department shall develop a request for proposals for each of the systems that will make up the network. The department may develop a request for proposals for each definitive component of Part I, Part II, and Part III of the system or the department may provide in the request for proposals for each such system that separate contracts may be entered into for each definitive component covered by the request for proposals. The requests for proposals may be for the purchase, lease-purchase, or lease of the component parts of the system, may require

maintenance costs to be identified, and the resulting contract may provide for maintenance for parts of the system. The master contract may provide for electronic classrooms, satellite equipment, receiving equipment, studio and production equipment, and other associated equipment as required.

5. Prior to the awarding of a contract under this section, the department shall notify the legislative council and the department of management of the department's intent to award a contract and of the cost to the state. The department of management and the legislative council shall determine if the anticipated financial resources of the state are adequate to fund the expenditure during the fiscal years covered by the contract, and if so, the department of management shall certify the determination to the department. Upon certification, the department may enter into the contract.

6. The department of general services shall be responsible for the network system design and shall be responsible for the implementation of each component of the network as it is incorporated into the network system. The final design selected shall optimize the routing for all users in order to assure maximum utilization by all agencies of the state. Efficiencies achieved in the implementation of the network shall be used to fund further implementation and enhancement of the network, and shall be considered part of the operational cost of the network. The department shall be responsible for all management, operations, control switching, diagnostics, and maintenance functions of Part I and Part II of the system operations, except as designated in subsection 7. The performance of these duties is intended to provide optimal utilization of the facilities, and the assurance that future growth requirements will be provided for, and that sufficient network capacity will be available to meet the needs of all users. The telecommunications information management council, created by executive order of the governor, shall provide general oversight for these functions.

7. The Iowa public broadcasting board retains sole authority over the educational telecommunications applications of Part I of the system, and its authority shall include management and operational control, programming, budget, personnel, scheduling, and program switching of educational material carried by Part I of the system. The Iowa public broadcasting board, through its narrowcast system advisory committee, retains coordination authority over the educational telecommunications applications of Part II and Part III of the system. Area schools are responsible for scheduling and switching of educational materials carried by Part II and Part III of the system within their respective areas. Such responsibility may be accomplished by a chapter 28E agreement with the department of general services.

8. The procurement and maintenance of electronic equipment including, but not limited to, master receiver antenna systems, studio and production equipment, and broadcast system components shall be provided for under department of general services' contracts. The Iowa public broadcasting board and other educational entities within the state have the option to use their existing or replacement resources and agreements in the operation and maintenance of these systems.

9. In addition to the other evaluation criteria specified in the request for proposals issued pursuant to this section, the department of general services, in evaluating proposals, shall base up to two percent of the total possible points on the public benefit that can be derived from a given proposal due to the increased private telecommunications capacity available to Iowa citizens located in rural Iowa. For purposes of this subsection, an area of the state is considered rural if it is not part of a federally designated standard metropolitan statistical area.

10. The fees charged for use of the network shall be based on the ongoing operational costs of the network only.

11. The Iowa public broadcasting board, in consultation with its narrowcast system advisory committee, shall determine the fee to be charged per course or credit hour by the originating institution, and the fees shall be substantially the same for comparable courses.

12. Access to the network shall be offered on an equal basis to public and private agencies under subsection 7 if the private agency contributes an amount toward the match requirement comparable to its share of use for the part of the system in which it participates.

13. Notwithstanding chapter 476, the provisions of chapter 476 shall not apply to a public utility in furnishing a telecommunications service or facility to the department of general services for the state communications network.

89 Acts, ch 319, §33 HF 774  
Use as matching funds; 89 Acts, ch 322, §7 HF 799  
NEW section

### **18.137 State communications network fund.**

There is created in the office of the treasurer of state a temporary fund to be known as the state communications network fund. There is appropriated, contingent upon the certification from the department of management of financial resources adequate to fund the expenditure, to the state communications network fund for each fiscal year of the fiscal period beginning July 1, 1989, and ending June 30, 1994, the sum of ten million dollars from funds in the general fund of the state not otherwise appropriated. Any moneys remaining in the fund on June 30 of a fiscal year, of moneys appropriated from the general fund of the state for that fiscal year, shall revert to the general fund of the state, except that those funds needed to provide the state matching funds pursuant to section 18.136 shall not revert, notwithstanding section 8.33. There shall also be deposited into the state communications network fund proceeds from bonds issued for purposes of projects authorized pursuant to section 18.136, matching funds received from the area schools and the local school boards, funds received from leases pursuant to section 18.134, and other moneys by law credited to or designated by a person for deposit into the fund.

The Iowa public broadcasting board shall use the net increase in the federal match awarded to the Iowa public broadcasting board as a result of this appropriation in order to meet the needs of the educational telecommunications system. These funds shall be deposited in a separate account within the state communications network fund, and shall be administered by the Iowa public broadcasting board for purposes of the fund.

89 Acts, ch 319, §34 HF 774  
Use as matching funds; 89 Acts, ch 322, §7 HF 799  
NEW section

**18.160 through 18.163** Repealed by 89 Acts, ch 76, §10. HF 256

**18.164 Duties of division.** Repealed by 89 Acts, ch 76, §10. HF 256 See §18.3(10).

**18.165 Guidelines.** Repealed by 89 Acts, ch 76, §10. HF 256 See §18.12(17,18) and 18.115(10).

**18.166 through 18.169** Repealed by 89 Acts, ch 76, §10. HF 256

## CHAPTER 18B

### INTERNATIONAL NETWORK ON TRADE

#### 18B.1 Definitions.

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

1. *"Business"* means a commercial enterprise engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate or intrastate commerce, or the production of agricultural products from farming as defined in section 175.2, but excludes retail, health, or professional services. *"Business"* includes a financial institution, including an insured bank as defined in section 524.103, a credit union as defined in section 533.1, and an association as defined in section 534.102.

2. *"Executive director"* means the executive director of the board as established in section 18B.8.

3. *"Fund"* means the international network on trade fund created in section 18B.11.

4. *"INTERNET"* means the international network on trade as established in section 18B.3.

89 Acts, ch 258, §1 HF 686  
NEW section

#### 18B.2 Legislative findings.

The general assembly finds and declares that:

1. The economic viability of the state depends upon enhancing Iowa's participation in the emerging global economy.

2. Iowa's successful participation in international trade depends upon a commitment between public and private sectors and between public agencies to assist businesses in enhancing the export of Iowa products.

3. Successful participation in international trade depends upon public agencies reaching out to provide special assistance to small and medium sized businesses interested in beginning or increasing the export of Iowa products.

4. Successful participation in international trade depends upon fostering international business research and training to expand opportunities by Iowa businesses to increase trade in viable foreign markets.

5. Iowa businesses are in need of a simple nonbureaucratic mechanism which serves as a key for Iowa businesses to reach sources designed to assist businesses in accessing foreign markets or increasing foreign trade.

89 Acts, ch 258, §2 HF 686  
NEW section

#### 18B.3 Establishment of INTERNET—mission.

The international network on trade is established to conduct long-range research quantifying product and geographical opportunities for Iowa producers in the global marketplace, including determining actions necessary, by public or private sector groups, to successfully exploit those opportunities. Research shall be conducted in concert with private sector members of INTERNET, higher educational institutions, and existing export support resources, including but not limited to the department of economic development, the department of agriculture and land stewardship, and the United States department of commerce. INTERNET at all times shall avoid duplication of resource programs. INTERNET

shall recommend a coordinated international trade policy designed to substantially increase Iowa's global trade benefits.

89 Acts, ch 258, §3 HF 686

Transfer of equipment and materials from world trade institute study committee; board of INTERNET to consider materials and recommendations produced by that committee; 89 Acts, ch 258, §24 HF 686

NEW section

#### **18B.4 Authorized corporation—staff.**

The international network on trade shall be incorporated under chapter 504A. INTERNET shall not be regarded as a state agency, except for purposes of chapter 17A. A member of the board of directors is not considered a state employee, except for purposes of chapter 25A. If the executive director is a natural person acting as a salaried employee of the board, the executive director is a state employee except for purposes of the merit system provisions of chapter 19A and chapter 20. A natural person hired by the executive director who is a salaried employee of the board is a state employee. However, if a person, including a staff member of INTERNET, is an independent contractor or an employee of an independent contractor, the person is not a state employee except for purposes of chapter 25A.

89 Acts, ch 258, §4 HF 686

NEW section

#### **18B.5 Board of directors.**

1. INTERNET shall be governed by a board of directors consisting of the following:

- a. The president of the university of Iowa, or the president's designee.
- b. The president of Iowa state university of science and technology, or the president's designee.
- c. The president of the university of northern Iowa, or the president's designee.
- d. The director of the department of economic development, or the director's designee.
- e. The chairperson of the agricultural products advisory council, who shall serve as an ex officio nonvoting member.
- f. The secretary of agriculture or the secretary's designee.
- g. Three designees of the Iowa association of independent colleges and universities. The association shall give preference to appointing designees representing schools which are members of INTERNET.
- h. Three designees of the Iowa association of community college presidents. A designee shall not represent more than one community college.
- i. Four designees who are elected from the business membership. The designees must be business persons actively engaged in international trade. At least two of the persons must have experience in exporting and at least one of the persons must have experience in international finance. No two members shall represent the same business.
- j. Two designees who are elected from the business membership. The designees must represent associations operating not for profit to promote or facilitate international trade on a local or regional basis. No two designees shall be employees of the same association.

2. The voting members of the board shall serve staggered terms of four years except that of the first terms, seven voting members shall serve terms of two years. A person appointed to fill a vacancy for a director shall serve only for the unexpired portion of the term. A director is eligible for reappointment. A director may be removed from office by a two-thirds vote of the board for misfeasance, malfeasance, or willful neglect of duty or other just cause after notice and hearing, unless the notice and hearing is expressly waived by the director in writing.

3. In designating or electing persons to serve on the board, INTERNET members, to the extent practicable, shall designate or elect a board membership which is geographically and gender balanced.

4. Nine voting members constitute a quorum and the affirmative vote of a majority of the voting members is necessary for substantive action taken by the board. The majority shall not include a voting member who has a conflict of interest and a statement by a voting member that the voting member has a conflict of interest is conclusive for this purpose. A vacancy in the board's membership does not impair the right of a quorum to exercise all rights and perform all duties of the board.

5. The directors actively engaged in international trade, the directors representing international trade associations, and the directors appointed by the Iowa association of independent colleges and universities are entitled to receive forty dollars per diem for each day spent in performance of duties as directors, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as directors.

6. The board shall elect a chairperson from among its directors.

7. Meetings of the board shall be held at the call of the chairperson or at the written request of four directors to the chairperson.

89 Acts, ch 258, §5 HF 686

Initial organization; permanent board to be organized not later than January 1, 1990; directors representing business members to be elected as soon after that date as is reasonably practicable and not later than June 30, 1990; 89 Acts, ch 258, §23 HF 686

NEW section

### **18B.6 General powers.**

The board established pursuant to section 18.5 shall have all the general powers needed to carry out its mission and duties, including but not limited to the following powers:

1. To sue and be sued in its own name.
2. To adopt a corporate seal.
3. To adopt bylaws for its management consistent with the provisions of this chapter.
4. To make and execute agreements, contracts and other instruments, with any public or private entity, including but not limited to a federal or governmental agency, foreign nation, or another state in the union. All political subdivisions, other public agencies and state agencies may enter into contracts and otherwise cooperate with the board.
5. To procure insurance against any loss in connection with its operations and property interests.
6. To fix and collect fees and charges for its services.
7. To accept contributions, including but not limited to appropriations, gifts, grants, loans, services, or other aid or assistance from public or private entities. A record of all contributions, stating the type, amount, and donor, shall be clearly set forth in the board's annual report along with the record of other receipts.

89 Acts, ch 258, §6 HF 686

NEW section

### **18B.7 INTERNET membership.**

1. INTERNET shall include academic and business members.
  - a. The academic members shall include the following:
    - (1) The university of Iowa.
    - (2) Iowa state university of science and technology.
    - (3) The university of northern Iowa.
    - (4) Each area community college within a merged area as established in chapter 280A.

(5) A private college or university which agrees to participate as an INTERNET member and is a member of the Iowa association of independent colleges and universities.

b. The business members shall include any business actively involved in international trade, including export trade, export assistance, or international finance.

2. a. The academic members shall cooperate with the board in accomplishing the mission and duties of the board as provided in this chapter. Each member shall execute a membership agreement with the board. A member under the terms of the agreement shall provide an annual contribution as provided by the board. The contribution shall relate to supporting programs administered by the board, and may include financial or in-kind assistance such as office space, personnel time, materials and supplies, or a combination of financial or in-kind assistance. A minimum contribution is required to become an academic member.

b. The business members shall cooperate with the board in accomplishing the mission and duties of the board as provided in a membership agreement executed between the board and the members. A member under the terms of the agreement shall make an annual contribution as provided by the board. The contribution shall relate to supporting programs administered by the board and may include financial or in-kind assistance such as office space, personnel time, materials and supplies or a combination of financial or in-kind assistance. A minimum contribution is required to become a business member.

3. A member, other than the university of Iowa, Iowa state university of science and technology, the university of northern Iowa, or a community college, may withdraw from membership and all commitments entered into between the board and the member after one year following written notice by the member delivered to the executive director. The terms of the membership agreement executed between the board and the member shall terminate one year following written notice of the member's withdrawal, unless the board and the member otherwise agree in writing.

89 Acts, ch 258, §7 HF 686  
NEW section

### **18B.8 Executive director.**

1. Under the general direction of the board, the executive director shall do all of the following:

a. Manage and operate the INTERNET, including hiring and directing INTERNET staff whether salaried employees of the board or independent contractors.

b. Establish subcommittees of business and academic specialists as needed. The specialists shall be consulted as program areas are developed and individual projects are selected for funding.

c. Keep the membership of INTERNET informed of items of importance relating to programs or projects of INTERNET, INTERNET finances, and actions by the board.

d. Negotiate membership agreements, including terms relating to the contribution of a member, according to section 18B.7.

e. Advise the board on matters relating to the mission of INTERNET, including programs and projects under consideration or implementation by the board and finances of INTERNET.

f. Recommend bylaws, and rules to be adopted by the board.

g. Control INTERNET finances, including appropriations, and contributions, and approve expenses from the fund in a manner consistent with rules and procedures of the treasurer of state.

*h.* Report to the board the condition of INTERNET including programs, projects, and INTERNET finances, at least once each three months. The executive director shall prepare for board approval an annual report provided in section 18B.10.

2. The executive director shall not, directly or indirectly, exert influence to induce any other officer or employee of the state to adopt a political view, or to favor a political candidate for office.

3. The executive director shall serve as secretary to the board, and shall be custodian of all documents, including books and papers filed with the authority of the minutes of board meetings. The executive director shall make copies of documents and provide certificates under seal that the copies are true copies and that all persons dealing with INTERNET may rely upon the certificates.

89 Acts, ch 258, §8 HF 686  
NEW section

### **18B.9 Board duties.**

The board shall carry out the mission of INTERNET and shall have discretionary authority to perform the following duties:

1. To appoint and direct an executive director and employ INTERNET staff, including the executive director, as salaried employees of INTERNET or as independent contractors.

2. To approve the budget of INTERNET for each fiscal year.

3. To adopt goals and objectives of INTERNET, including recommendations to the general assembly and governor of a coordinated trade policy designed to substantially increase Iowa's global trade benefits.

4. To target for assistance businesses or products which indicate a high potential for expansion in foreign markets.

5. To provide special assistance to small and medium sized businesses interested in beginning or increasing the export of Iowa products.

6. To conduct special research projects, including product research in foreign markets.

7. To inventory and catalog international resources of information, including experts and programs, available to provide assistance to businesses interested in foreign trade.

8. To establish a clearinghouse of information to refer to appropriate resources businesses interested in accessing foreign markets or expanding foreign trade.

9. To establish criteria and award grants or loans based only on a competitive basis for programs relating to international training or research. In making financial awards, preference shall be given to members, as provided in section 18B.7.

10. To facilitate contact between businesses in search of assistance in entering or expanding foreign trade and persons able to assist the business.

11. To cooperate with Iowa universities and colleges, governmental agencies, and businesses where collaboration would add value to international trade programs or increase opportunities in foreign markets for increased trade.

12. To recruit business and colleges to become INTERNET members as provided in section 18B.7.

13. In order to leverage state funds appropriated to INTERNET, to actively seek financial support from nonstate sources, including from the federal government, and from businesses. The board may require a match from nonstate sources for programs, seek generic business support for INTERNET, seek support from business in one or more industries for programs which may benefit those businesses, or charge fees for services provided under the authority of INTERNET. The board shall use INTERNET resources to the maximum extent possible in order to seek matching funds, gifts, grants or additional assets, including funding sources.

14. To conduct international research according to requests from INTERNET members.

15. To regularly disseminate to INTERNET members information and issues relating to international trade, including data and findings from market studies.

16. To monitor changing world economic and political conditions.

17. To report annually about INTERNET to the governor and the general assembly as provided in section 18B.10.

18. To oversee the progress of programs and projects administered by INTERNET and monitor the status of INTERNET assets, including finances.

19. To approve membership agreements, including terms relating to contributions of members as provided in section 18B.7.

20. To approve any contract or agreement committing INTERNET to the substantial expenditure of INTERNET assets.

21. To adopt bylaws for INTERNET, approve other procedures relating to the day-to-day administration of INTERNET, and adopt rules consistent with chapter 17A.

89 Acts, ch 258, §9 HF 686  
NEW section

### **18B.10 Annual report.**

1. The board shall approve and submit to the governor and to the secretary of the senate and to the chief clerk of the house of representatives, not later than January 15 of each year, a report setting forth information relating to INTERNET, including all of the following:

a. Matters relating to operations and accomplishments.

b. A summary of receipts and expenditures during the fiscal year, in accordance with the classifications it establishes for its operating accounts.

c. A summary of assets and liabilities at the end of the fiscal year and the status of special accounts.

d. A statement of proposed and projected activities.

e. Recommendations to the general assembly and governor, including recommendations related to a coordinated trade policy designed to substantially increase Iowa's global trade benefits.

2. The annual report shall identify performance goals of INTERNET, and indicate the extent of progress during the reporting period, in attaining the goals.

89 Acts, ch 258, §10 HF 686  
NEW section

### **18B.11 International network on trade fund.**

There is created within the state treasury, an international network on trade fund. The fund is composed of money appropriated by the general assembly for that purpose, and moneys available to and obtained or accepted by the board under this chapter, including money from the United States, other states in the union, foreign nations, state agencies, political subdivisions, and private sources, and moneys from fees charged under this chapter.

The fund shall be a revolving fund from which moneys may be used for purposes described in this chapter, including loans, grants, matching financing, and administrative costs. All interest earned on proceeds in the fund shall remain in the fund.

The auditor of state shall conduct regular audits of the fund and shall make a certified report relating to the condition of the fund to the treasurer of state and to the executive director.

The board and executive director shall administer the fund in accordance with procedures of the treasurer of state. In administering the fund, the board may do all of the following:

1. Contract, sue and be sued, and adopt rules necessary to carry out the provisions of this section, but the board shall not in any manner, directly or indirectly pledge the credit of the state.

2. Authorize payment from the fund, from fees and from any income received by investment 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 the loans.

Section 8.33 shall not apply to moneys in the fund.

89 Acts, ch 258, §11 HF 686  
NEW section

## CHAPTER 19

### EXECUTIVE COUNCIL

#### 19.29 Performance of duty—expense.

The executive council shall not employ others, or incur any expense, for the purpose of performing any duty imposed upon the council when the duty may, without neglect of their usual duties, be performed by the members, or by their regular employees, but, subject to this limitation, the council may incur the necessary expense to perform or cause to be performed any legal duty imposed on the council, and pay the same out of any money in the state treasury not otherwise appropriated.

89 Acts, ch 315, §25 SF 517  
Section amended

#### 19.35 Dispute resolution.

The executive council shall resolve any disputes transmitted to it by the department of natural resources, the state building code commissioner, or both, arising under section 470.7.

89 Acts, ch 315, §26 SF 517  
NEW section

## CHAPTER 19A

### DEPARTMENT OF PERSONNEL

Department to conduct a four-day workweek pilot project; and shall study and identify employees who could telecommute; 89 Acts, ch 297, §15, 16 SF 419

#### 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 state public 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 commissioner 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.
  21. Chief deputy industrial commissioners.
- The director of the department of personnel shall negotiate agreements with the director of the department for the blind and with the director of the department of education concerning the applicability of the merit system to the professional employees of their respective agencies.

89 Acts, ch 60, §1 SF 444  
Subsection 21 amended

### **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 any information by that employee to a member or employee of the general assembly, or for a disclosure of information to any other public official or law enforcement agency if the employee reasonably believes the information 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. However, this paragraph does not apply if the disclosure of the information is prohibited by statute.

89 Acts, ch 124, §1 HF 542  
Unnumbered paragraph 4 amended

## CHAPTER 20

### PUBLIC EMPLOYMENT RELATIONS (COLLECTIVE BARGAINING)

#### 20.4 Exclusions.

The following public employees shall be excluded from the provisions of this chapter:

1. Elected officials and persons appointed to fill vacancies in elective offices, and members of any board or commission.

2. Representatives of a public employer, including the administrative officer, director or chief executive officer of a public employer or major division thereof as well as the officer's or director's deputy, first assistant, and any supervisory employees.

"*Supervisory employee*" means any individual having authority in the interest of the public employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other public employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. All school superintendents, assistant superintendents, principals and assistant principals shall be deemed to be supervisory employees.

3. Confidential employees.

4. Students working as part-time public employees twenty hours per week or less, except graduate or other postgraduate students in preparation for a profession who are engaged in academically related employment as a teaching, research, or service assistant.

5. Temporary public employees employed for a period of four months or less.

6. Commissioned and enlisted personnel of the Iowa national guard.

7. Judicial officers, and confidential, professional, or supervisory employees of the judicial department.

8. Patients and inmates employed, sentenced or committed to any state or local institution.

9. Persons employed by the state department of justice, except nonsupervisory employees of the consumer advocate division who are employed primarily for the purpose of performing technical analysis of nonlegal issues.

10. Persons employed by the credit union division of the department of commerce.

11. Persons employed by the banking division of the department of commerce.

12. Persons employed by the savings and loan division of the department of commerce.

89 Acts, ch 296, §5, SF 141; 89 Acts, ch 158, §3, SF 170  
 Subsection 2, unnumbered paragraph 2 amended  
 Subsection 9 amended

### **20.11 Prohibited practice violations.**

1. Proceedings against a party alleging a violation of section 20.10, shall be commenced by filing a complaint with the board within ninety days of the alleged violation causing a copy of the complaint to be served upon the accused party in the manner of an original notice as provided in this chapter. The accused party shall have ten days within which to file a written answer to the complaint. However, the board may conduct a preliminary investigation of the alleged violation, and if the board determines that the complaint has no basis in fact, the board may dismiss the complaint. The board shall promptly thereafter set a time and place for hearing in the county where the alleged violation occurred. The parties shall be permitted to be represented by counsel, summon witnesses, and request the board to subpoena witnesses on the requester's behalf. Compliance with the technical rules of pleading and evidence shall not be required.

2. The board may designate an administrative law judge to conduct the hearing. The administrative law judge has the powers as may be exercised by the board for conducting the hearing and shall follow the procedures adopted by the board for conducting the hearing. The decision of the administrative law judge may be appealed to the board and the board may hear the case de novo or upon the record as submitted before the administrative law judge, utilizing procedures governing appeals to the district court in this section so far as applicable.

3. The board shall appoint a certified shorthand reporter to report the proceedings and the board shall fix the reasonable amount of compensation for such service, which amount shall be taxed as other costs.

4. The board shall file its findings of fact and conclusions of law. If the board finds that the party accused has committed a prohibited practice, the board may, within thirty days of its decision, enter into a consent order with the party to discontinue the practice, or after the thirty days following the decision may petition the district court for injunctive relief pursuant to rules of civil procedure 320 to 330.

5. The board's review of proposed decisions and the rehearing or judicial review of final decisions is governed by the provisions of chapter 17A.

89 Acts, ch 296, §6, 7 SF 141  
 Subsections 4 and 5 amended  
 Subsections 6-11 stricken

### **20.17 Procedures.**

1. The employee organization certified as the bargaining representative shall be the exclusive representative of all public employees in the bargaining unit and shall represent all public employees fairly. However, any public employee may meet and adjust individual complaints with a public employer.

2. The employee organization and the public employer may designate any individual as its representative to engage in collective bargaining negotiations.
3. Negotiating sessions, strategy meetings of public employers or employee organizations, mediation and the deliberative process of arbitrators shall be exempt from the provisions of chapter 21. However, the employee organization shall present its initial bargaining position to the public employer at the first bargaining session. The public employer shall present its initial bargaining position to the employee organization at the second bargaining session, which shall be held no later than two weeks following the first bargaining session. Both sessions shall be open to the public and subject to the provisions of chapter 21. Hearings conducted by arbitrators shall be open to the public.
4. The terms of a proposed collective bargaining agreement shall be made available to the public by the public employer and reasonable notice shall be given to the public employees by the employee organization prior to a ratification election. The collective bargaining agreement shall become effective only if ratified by a majority of those voting by secret ballot.
5. Terms of any collective bargaining agreement may be enforced by a civil action in the district court of the county in which the agreement was made upon the initiative of either party.
6. No collective bargaining agreement or arbitrators' decision shall be valid or enforceable if its implementation would be inconsistent with any statutory limitation on the public employer's funds, spending or budget or would substantially impair or limit the performance of any statutory duty by the public employer. A collective bargaining agreement or arbitrators' award may provide for benefits conditional upon specified funds to be obtained by the public employer, but the agreement shall provide either for automatic reduction of such conditional benefits or for additional bargaining if the funds are not obtained or if a lesser amount is obtained.
7. If agreed to by the parties nothing in this chapter shall be construed to prohibit supplementary bargaining on behalf of public employees in a part of the bargaining unit concerning matters uniquely affecting those public employees or co-operation and co-ordination of bargaining between two or more bargaining units.
8. The salaries of all public employees of the state under a merit system and all other fringe benefits which are granted to all public employees of the state shall be negotiated with the governor or the governor's designee on a state-wide basis, except those benefits which are not subject to negotiations pursuant to the provisions of section 20.9.
9. A public employee or any employee organization shall not negotiate or attempt to negotiate directly with a member of the governing board of a public employer if the public employer has appointed or authorized a bargaining representative for the purpose of bargaining with the public employees or their representative, unless the member of the governing board is the designated bargaining representative of the public employer.
10. The negotiation of a proposed collective bargaining agreement by representatives of a state public employer and a state employee organization shall be complete not later than March 15 of the year when the agreement is to become effective. The board shall provide, by rule, a date on which any impasse item must be submitted to binding arbitration and for such other procedures as deemed necessary to provide for the completion of negotiations of proposed state collective bargaining agreements not later than March 15. The date selected for the mandatory submission of impasse items to binding arbitration shall be suffi-

ciently in advance of March 15 to insure that the arbitrators' decision can be reasonably made before March 15.

89 Acts, ch 296, §8 SF 141  
Subsection 4 amended

## CHAPTER 21

### OFFICIAL MEETINGS OPEN TO PUBLIC

#### 21.2 Definitions.

As used in this chapter:

1. "*Governmental body*" means:
  - a. A board, council, commission or other governing body expressly created by the statutes of this state or by executive order.
  - b. A board, council, commission, or other governing body of a political subdivision or tax-supported district in this state.
  - c. A multimembered body formally and directly created by one or more boards, councils, commissions, or other governing bodies subject to paragraphs "a" and "b" of this subsection.
  - d. Those multimembered bodies to which the state board of regents or a president of a university has delegated the responsibility for the management and control of the intercollegiate athletic programs at the state universities.
  - e. An advisory board, advisory commission, or task force created by the governor or the general assembly to develop and make recommendations on public policy issues.
2. "*Meeting*" means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of this chapter.
3. "*Open session*" means a meeting to which all members of the public have access.

89 Acts, ch 73, §1 HF 647  
Subsection 1, NEW paragraph e

#### 21.10 Information to be provided.

The authority which appoints members of governmental bodies shall provide the members with information about this chapter and chapter 22. The appropriate commissioner of elections shall provide that information to members of elected governmental bodies.

89 Acts, ch 73, §2 HF 647  
NEW section

## CHAPTER 22

### EXAMINATION OF PUBLIC RECORDS

#### 22.2 Right to examine public records—exception.

1. Every person shall have the right to examine and copy public records and to publish or otherwise disseminate public records or the information contained therein. The right to copy public records shall include the right to make photographs or photographic copies while the records are in the possession of the custodian of the records. All rights under this section are in addition to the right to obtain certified copies of records under section 622.46.

2. A government body shall not prevent the examination or copying of a public record by contracting with a nongovernment body to perform any of its duties or functions.

3. However, notwithstanding subsections 1 and 2, a government body which maintains a geographic computer data base is not required to permit access to or use of the data base by any person except upon terms and conditions acceptable to the governing body. The governing body shall establish reasonable rates and procedures for the retrieval of specified records, which are not confidential records, stored in the data base upon the request of any person.

89 Acts, ch 189, §1 HF 675  
NEW subsection 3

## **22.7 Confidential records.**

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

1. Personal information in records regarding a student, prospective student, or former student maintained, created, collected or assembled by or for a school corporation or educational institution maintaining such records.

2. Hospital records, medical records, and professional counselor records of the condition, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient. However, confidential communications between a crime victim and the victim's counselor are not subject to disclosure except as provided in section 236A.1. However, the Iowa department of public health shall adopt rules which provide for the sharing of information among agencies concerning the maternal and child health program, while maintaining an individual's confidentiality.

3. Trade secrets which are recognized and protected as such by law.

4. Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body.

5. Peace officers' investigative reports, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances 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 or information 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.

25. Records of purchases of alcoholic liquor from the alcoholic beverages division of the department of commerce which would reveal purchases made by an individual class "E" liquor control licensee. However, the records may be revealed for law enforcement purposes or for the collection of payments due the division pursuant to section 123.24.

26. Financial information, which if released would give advantage to competitors and serve no public purpose, relating to commercial operations conducted or intended to be conducted by a person submitting records containing the information to the agricultural diversification bureau of the department of agriculture and land stewardship for the purpose of obtaining assistance in business planning.

89 Acts, ch 194, §1 HF 674; 89 Acts, ch 304, §102 SF 538; 89 Acts, ch 311, §22 HF 778  
See Code editor's note  
Subsection 2 amended  
NEW subsection 26

## CHAPTER 24

### LOCAL BUDGET LAW

#### 24.14 Tax limited.

A greater tax than that so entered upon the record shall not be levied or collected for the municipality proposing the tax for the purposes indicated and a greater expenditure of public money shall not be made for any specific purpose than the amount estimated and appropriated for that purpose, except as provided in sections 24.6 and 24.15. All budgets set up in accordance with the statutes shall take such funds, and allocations made by sections 123.53, 324.79 and chapter 405A, into account, and all such funds, regardless of their source, shall be considered in preparing the budget.

89 Acts, ch 83, §12 SF 112  
Section amended

## 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 a contractor with the state of Iowa. Soil and water conservation districts as defined in section 467A.3, 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.

89 Acts, ch 83, §13 SF 112  
Subsection 1 amended

#### 25A.14 Exceptions.

The provisions of this chapter shall not apply with respect to any claim against the state, to:

1. Any claim based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion be abused.

2. Any claim arising in respect to the assessment or collection of any tax or fee, or the detention of any goods or merchandise by any law enforcement officer.
3. Any claim for damages caused by the imposition or establishment of a quarantine by the state, whether such quarantine relates to persons or property.
4. Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.
5. Any claim by an employee of the state which is covered by the Iowa workers' compensation law or the Iowa occupational disease law.
6. Any claim by an inmate as defined in section 85.59.
7. A claim based upon damage to or loss or destruction of private property, both real and personal, or personal injury or death, when the damage, loss, destruction, injury or death occurred as an incident to the training, operation, or maintenance of the national guard while not in "active state service" as defined in section 29A.1, subsection 5.
8. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a highway, secondary road, or street as defined in section 321.1, subsection 48, that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing highway, secondary road, or street, to new, changed, or altered design standards. In respect to highways and roads, sealcoating, asphaltting, patching, resurfacing, ditching, draining, repairing, graveling, rocking, blading, or maintaining an existing highway or road does not constitute reconstruction. This subsection shall not apply to claims based upon gross negligence.
9. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a public improvement as defined in section 384.37, subsection 1, or other public facility that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing public improvement or other public facility to new, changed, or altered design standards. This subsection shall not apply to claims based upon gross negligence. This subsection takes effect July 1, 1984 and applies to all cases tried or retried on or after July 1, 1984.
10. Any claim based upon the enforcement of chapter 89B.
11. Any claim for financial loss based upon an act or omission in financial regulation, including but not limited to examinations, inspections, audits, or other financial oversight responsibilities, pursuant to Titles XIX through XXIII.  
Subsection 11 applies to all cases filed on or after July 1, 1986, and does not expand any existing cause of action or create any new cause of action against the state.
12. Any claim based upon the actions of a care review committee member in the performance of duty if the action is undertaken and carried out in good faith.
13. A claim relating to a swimming pool or spa as defined in section 135I.1 which has been inspected in accordance with chapter 135I, or a swimming pool or spa inspection program, which has been established or certified by the state in accordance with that chapter, unless the claim is based upon an act or omission of

an officer or employee of the state and the act or omission constitutes actual malice or a criminal offense.

89 Acts, ch 291, §7 HF 373  
NEW subsection 13

## CHAPTER 28

### DEVELOPMENT ACTIVITIES

#### DIVISION VI

##### IOWA HIGH TECHNOLOGY COUNCIL

**28.51 through 28.55** Repealed by 89 Acts, ch 258, §25. See §28.152–28.160 HF 686

Repeal effective July 1, 1990; 89 Acts, ch 258, §26 HF 686

#### **28.149 Multiple corporations.**

The public directors, by a majority vote, may create more than one corporation. Each additional corporation shall be governed by this chapter. An additional corporation may act as a general partner in a limited partnership under chapter 545.

89 Acts, ch 180, §1 HF 273  
NEW section

#### **28.150 and 28.151** Reserved.

#### DIVISION XIV

##### WALLACE TECHNOLOGY TRANSFER FOUNDATION

**28.152 Wallace technology transfer foundation of Iowa established—mission.**

The general assembly finds and declares that the public good requires that Iowa successfully participate and compete in the emerging world economy. A Wallace technology transfer foundation of Iowa is established to formulate and implement plans and programs for the development of advanced sciences and technologies and to facilitate their commercial application within the state, including determining the needs of individual Iowa businesses and farms for scientific and technological innovations to improve products and processes, and encouraging the transfer of the technology from the laboratory to the factory and farm.

The mission of the foundation shall include but is not limited to the following:

1. A program to identify barriers which may hinder the development and exploitation of technology in the global economy.

2. Continued development of Iowa's capacity for scientific and technological innovation.

3. A cooperative, coordinated program of forecasting, assessment, development, and commercial transfer involving Iowa's capacity for scientific and technological innovation.

4. Formulation of a long-range strategic plan to guide state investment in applied research, development, and commercial transfer of selected scientific and technological innovation and in the development of Iowa science infrastructure.

5. A mechanism to organize funding from a variety of sources to support the development and commercial transfer of scientific and technological innovation.

6. An outreach program to actively seek and improve products and processes with Iowa's scientific and technological innovations.

7. Establishment of a seed capital fund which shall be administered by the board to provide seed capital for the commercialization of products, or the development of processes or materials through research at Iowa colleges and universities or by private industry.

The foundation consists of a board of directors, an advisory council, an executive director, and staff.

89 Acts, ch 258, §13 HF 686  
NEW section

### **28.153 Authorized corporation.**

A Wallace technology transfer foundation of Iowa shall be incorporated under chapter 504A. The foundation shall not be regarded as a state agency, except for purposes of chapter 17A. A member of the board of directors is not considered a state employee, except for purposes of chapter 25A. The executive director is a state employee except for purposes of the merit system provisions of chapter 19A and chapter 20. A natural person employed by the executive director is a state employee.

89 Acts, ch 258, §14 HF 686  
NEW section

### **28.154 Board of directors.**

1. The board of directors is established consisting of the following standing members and governor-appointed members:

a. The following standing members:

(1) One board member to represent each state university's consortium appointed by the president of each state university.

(2) A president of a merged area school, or the president's designee, appointed by the Iowa association of community college presidents.

(3) A president of an Iowa independent college or university, or the president's designee, appointed by the Iowa association of independent colleges and universities.

(4) The director of the department of economic development or the director's designee.

(5) The chairperson of the Iowa product development corporation.

(6) A shareholder member of the business development finance corporation elected by the business development finance corporation board.

(7) The secretary of agriculture or the secretary's designee.

(8) The governor's science advisor.

(9) Five persons appointed by the governor, subject to senate confirmation, three of whom shall be persons involved directly in research and development of technology-based industries or persons with experience in technology, and two of whom shall be directly involved in agriculture-related enterprises.

b. The following ex officio, nonvoting members:

Four board members, with one board member appointed by each of the following persons: the speaker of the house of representatives, the minority leader of the house of representatives, the majority leader of the senate, and the minority leader of the senate.

2. The board of directors shall be bipartisan and gender balanced in accordance with sections 69.16 and 69.16A.

3. The terms of the appointed members shall be for four years and shall be staggered as determined by the standing members. Any vacancy shall be filled by the appointing authority. Members are eligible for actual expense reimbursement while fulfilling duties of the foundation. The governor and the legislative council shall convene the initial meeting of the board. The board shall elect a chairperson from among its members.

89 Acts, ch 258, §15 HF 686  
NEW section

### **28.155 General powers and duties.**

The board of directors shall have all the general powers needed to carry out its mission and duties including but not limited to the following:

1. To prepare and adopt a strategic plan as defined in section 28.157.
2. To fund research projects as defined in section 28.158.
3. To sue and be sued in its own name.
4. To adopt a corporate seal.
5. To adopt bylaws for its management consistent with the provisions of this division.
6. To make and execute agreements, contracts and other instruments, with any public or private entity, including but not limited to a state, federal, or other governmental agency.
7. To accept contributions, including but not limited to appropriations, gifts, grants, loans, services, or other aid or assistance from public or private entities. A record of all contributions, stating the type, amount, and donor, shall be clearly set forth in the board's annual report along with a record of other receipts.
8. To establish policy in the general administration of the affairs of the foundation.
9. To employ an executive director and authorize the hiring of other employees as it deems necessary.
10. To seek to achieve through the powers of the board the findings of section 28.152.
11. To collaborate with the consortia as established in chapter 262B.
12. To provide as necessary, staff services for the advisory council.
13. To convene the advisory council annually to receive the board of director's recommendations.
14. To establish committees of business, agriculture, academic specialists, or others as deemed necessary.
15. Submit an annual report to the governor, the secretary of the senate, and the chief clerk of the house of representatives, not later than November 1 of each year.
16. To collaborate with the Iowa product development corporation to acquire new technology where appropriate.

89 Acts, ch 258, §16 HF 686  
NEW section

#### **28.156 Executive director—duties.**

Under the general direction of the board of directors, the executive director shall have the following duties:

1. Manage and operate the foundation, including employing and directing foundation staff.
2. Advise the board on matters relating to the mission of the foundation, or finances and actions of the board.
3. Make an annual report to the board for its approval of the foundation's activities and fiscal condition, including:
  - a. Matters relating to operations and accomplishments.
  - b. A summary of receipts and expenditures, in accordance with the classifications the board establishes for its operating accounts.
  - c. A summary of assets and liabilities and the status of special accounts.
  - d. A statement of proposed and projected activities.
  - e. Recommendations to the general assembly.
  - f. An identification of performance goals of the foundation and the extent of progress during the reporting period in attaining the goals.
  - g. A written report by the auditor of state pursuant to chapter 11.
4. Monitor the activities and receive copies of the annual report made pursuant to section 262B.5 of the research consortia located at Iowa state university of science and technology, the university of Iowa, and the university of northern Iowa.

5. Collect pertinent information on research in process and funding requests where appropriate at Iowa state university of science and technology, the university of Iowa, and the university of northern Iowa for the purpose of encouraging technology transfer where appropriate.

89 Acts, ch 258, §17 HF 686  
NEW section

### **28.157 Strategic plan for science and technology development.**

1. The foundation shall prepare a strategic plan for development of advanced technologies in Iowa. The plan shall serve as the basis for general foundation activities.

2. The plan shall set forth the foundation's findings with regard to fields of scientific research which offer the greatest potential for commercial development within the state. The plan shall propose programs to enhance the effectiveness of Iowa university and college and private sector research facility participation in such fields of research and for improving the transfer of research technology to the private sector.

3. The plan shall include findings and recommendations for the coordination of activities of technology centers operated by regents' universities, the center for industrial research and service, the small business development centers, and programs of the department of economic development, all of which shall cooperate with the foundation in formulation of the plan.

4. The plan shall be formulated in cooperation with university-based research consortia at the three regents' universities, private colleges and universities, community colleges, and private business. The plan shall include findings with regard to research interest of private business and agriculture, on improving accessibility of private business to university technology resources, identification of barriers to effective technology transfer, and on fields of research having potential for commercial utilization by Iowa firms and farms. The plan shall include the availability and possible acquisition of advanced technology nationally and internationally for transfer to Iowa technological projects.

5. The plan shall be formulated to provide for the strengthening and expansion of existing industry and agriculture, the creation of new business where deemed necessary and feasible, and the attraction of technology-based businesses to the state.

6. The plan shall include directions for participation by the foundation, through direct investment or in partnership or joint venture with a commercial investor or other financial source, in providing funds for development of existing or new businesses in Iowa engaged in commercial exploitation of products or technologies related to the research interests of the foundation.

89 Acts, ch 258, §18 HF 686  
NEW section

### **28.158 Funding of activities.**

1. The foundation may receive state appropriations and other resources for purposes including but not limited to the following:

a. To provide financial assistance to research projects which are consistent with the commercial development objectives of the strategic plan and which involve collaboration between an Iowa college, community college, or university and a private firm. The foundation shall provide a peer review process for projects and research funded by the foundation.

b. To undertake market studies and other analyses of commercial applications of existing or potential research and development efforts.

c. To provide applied technology outreach services and programs.

*d.* To review existing licenses and patents and bring potentially applicable information to the attention of the board and the Iowa-based industries for which the patent and license information might be applicable.

*e.* To review current research.

*f.* To regularly monitor the industrial and agricultural base of Iowa and, when possible, to encourage contact between research efforts and appropriate industries.

2. The foundation shall have authority over state funds appropriated to the foundation for research, development, and technology transfer projects. State funds awarded by the foundation shall be matched by nonstate sources. The foundation shall establish by administrative rule the requirements for the matching of state funds by nonstate sources. The rules shall include but are not limited to the following nonstate sources for meeting the matching requirements:

- a.* Laboratory space provided by the private sector collaborator.
- b.* Financial assistance.
- c.* Personnel and technical services.
- d.* Machinery or equipment.

3. The foundation shall seek financial support for its activities from private sources and from programs of the federal government for support of the research interests and other activities set forth in the strategic plan.

4. The foundation is to encourage aggressive pursuit of sponsored research by persons affiliated with Iowa colleges and universities and by private business, without regard to the relationship of such research to the foundation's program or to the strategic plan. The foundation shall not control research prerogatives of colleges or universities, their faculty, or private persons, or businesses. The foundation may, upon request, provide assistance to colleges and universities for acquisition of financial support for research activities from federal government and other sources.

5. The foundation shall coordinate with other state and federal entities the following activities:

- a.* The establishment of funding for the projects under subsection 1.
- b.* The review of current research policy direction.
- c.* The provision of technical outreach services to existing Iowa business, industry, and agriculture.

The foundation may sponsor applications of or formally recommend specific projects to any private, state, federal, or local program.

89 Acts, ch 258, §19 HF 686  
NEW section

### **28.159 Bonds and notes—authority.**

1. The foundation may issue its own negotiable bonds and notes in principal amounts as, in the opinion of the foundation, are necessary to provide sufficient funds for achievement of its corporate purposes. The foundation shall coordinate the issuance of notes and bonds with the treasurer of state as set forth in section 12.30. The foundation shall issue bonds and notes to the extent not inconsistent with the limitations and restrictions of issuing bonds and notes under sections 220.26, 220.27, and 220.28.

2. Bonds and notes issued by the foundation are payable solely and only out of the moneys, assets, or revenues of the foundation, 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 foundation within the meaning of any constitutional or statutory debt limitations, but are special obligations of the foundation payable solely and only from the sources provided in this section, and the foundation shall not pledge the credit or taxing power of this state or any

political subdivision of this state other than the foundation, or make its debts payable out of any moneys except those of the foundation.

3. The foundation may create and establish one or more special funds, to be known as "bond reserve funds", and shall pay into each bond reserve fund any moneys appropriated and made available by the state for the purpose of the fund, any proceeds of sale of notes or bonds to the extent provided in the resolutions of the foundation authorizing their issuance, and any other moneys which may be available to the foundation for the purpose of the fund from any other sources. All moneys held in a bond reserve fund shall be used as required solely for the payment of the principal of bonds secured in whole or in part by the fund or of the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds or the payments of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

4. The use of proceeds of the sale of bonds or notes shall be limited to the acquisition or lease-purchase of machinery and equipment relating to science and technology which is identified in the strategic plan prepared pursuant to section 28.157 and the use of proceeds shall be limited to not more than a total of one million dollars in any fiscal year unless authorized by a resolution of the general assembly and approved by the governor.

89 Acts, ch 258, §20 HF 686  
NEW section

### **28.160 Science and technology advisory council.**

1. There is established within the science and technology foundation an advisory council. The advisory council shall study and review the growth of technology in the world economy. The council shall annually review the foundation's strategic plan in conjunction with federal research policy and the federal research policy's effect on research in Iowa. The council shall advise the board on the most productive role for Iowa in the areas of science and technology with an emphasis on determining Iowa's strengths in technology.

2. The council shall consist of the following members:

a. Each member of the Iowa congressional delegation, or the member's designee.

b. Members appointed by the foundation upon consultation with the congressional delegation.

3. The council shall be bipartisan and gender balanced in accordance with sections 69.16 and 69.16A.

89 Acts, ch 258, §21 HF 686  
NEW section

## **CHAPTER 28G**

### **INTERGOVERNMENTAL SOLID WASTE SERVICES**

#### **28G.3 Creation of public service monopoly.**

If two or more local governments find that the only effective means of allowing the construction and utilization of a resource recovery facility for the recycling of solid waste for use as an energy source is to create a public service monopoly, a legal entity shall be created pursuant to chapter 28E by agreement of two or more local governments to displace competition with regulation and monopoly of a public service for the collection, transportation, storage, and disposal, or diversion of solid waste to the extent reasonably necessary to carry out these functions. The

agreement is subject to approval of the environmental protection commission before it becomes effective.

89 Acts, ch 83, §14 SF 112  
Section amended

## CHAPTER 29

### DEPARTMENT OF PUBLIC DEFENSE

#### **29.1 Department of public defense.**

The department of public defense is composed of the military division, the disaster services division, and the veterans affairs division. The adjutant general is the director of the department of public defense and the budget and personnel of all of the divisions are subject to the approval of the adjutant general. The Iowa emergency response commission established by section 30.2 is attached to the department of public defense for organizational purposes.

89 Acts, ch 204, §1 SF 512  
Section amended

## CHAPTER 29B

### MILITARY JUSTICE

#### **29B.2 Jurisdiction to try personnel.**

Each person discharged from the state military forces who is later charged with having fraudulently obtained a discharge is, subject to section 29B.44, subject to trial by court-martial on that charge and is after apprehension subject to this code while in the custody of the military for that trial. Upon conviction of that charge the person is subject to trial by court-martial for all offenses under this code committed before the fraudulent discharge.

No person who has deserted from the state military forces may be relieved from amenability to the jurisdiction of this code by virtue of a separation from any later period of service.

A member of the state military forces who is charged with having committed an offense against this code may be called or ordered to duty for the purpose of investigation under section 29B.33, trial by court-martial, and nonjudicial punishment under section 29B.14. A member shall be called or ordered to duty within one hundred eighty days of the discovery of the charged offense, and in no event shall a member be called or ordered to duty after the expiration of three years from the termination of a period of duty.

A member of the state military forces who is subject to this code at the time of commission of an offense made punishable by this code is not relieved from amenability to the jurisdiction of this code by virtue of the termination of a period of duty.

89 Acts, ch 82, §1 SF 82  
NEW unnumbered paragraphs 3 and 4

#### **29B.14 Commanding officers nonjudicial punishment.**

1. Under regulations as the adjutant general may prescribe limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers authorized to exercise those powers, the applicability of this section to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, punishment shall not be imposed upon any member of the state military forces under this section if

the member demands trial by court-martial in lieu of punishment before imposition of the punishment. The adjutant general may adopt rules relating to the suspension and mitigation of punishments authorized under this code. The adjutant general, or an officer of a general rank in command may delegate powers under this section to a principal assistant who is a member of the state military forces according to rules adopted by the adjutant general.

2. Subject to rules of the adjutant general, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose disciplinary punishments for minor offenses without the intervention of a court-martial as follows:

a. Upon officers under the officer's command any one or a combination of the following:

(1) Withholding of privileges for not more than two consecutive weeks.

(2) Restriction to certain specified limits with or without suspension from duty, for not more than two consecutive weeks.

(3) If imposed by a commanding officer of the state military forces of field grade or above, a fine of any amount up to a maximum of the equivalent of ten days' pay or the forfeiture of not more than ten days' pay.

b. Upon other military personnel under the officer's command any one or a combination of the following:

(1) Withholding of privileges for not more than two consecutive weeks.

(2) Restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks.

(3) Extra duties for not more than fourteen days, which need not be consecutive, and for not more than two hours per day, holidays included.

(4) Reduction to the next inferior pay grade if the current grade from which demoted is within the promotion authority of the officer imposing the reduction or an officer subordinate to the one imposing the reduction.

(5) A fine of any amount up to a maximum of the equivalent of four days' pay or the forfeiture of not more than four days' pay.

c. If the commanding officer is of field grade or above, any one or a combination of the following:

(1) Any of the punishments stated in paragraph "b", subparagraph (1), (2), or (3).

(2) A fine of any amount up to the maximum of the equivalent of ten days' pay or the forfeiture of not more than ten days' pay.

(3) Reduction to the lowest or any intermediate pay grade, if the current grade from which demoted is within the promotion authority of the officer imposing the reduction or an officer subordinate to the one imposing the reduction, but enlisted members in pay grades above E-4 shall not be reduced more than two pay grades.

d. Maximum allowable punishments of withholding of privileges, restrictions, and extra duties shall not be combined to run consecutively.

3. A person punished under this section who considers the punishment unjust or disproportionate to the offense may appeal to the next superior authority through the proper channel. The authority considering the appeal may refer a case that has been appealed to a staff judge advocate or legal officer for consideration and advice and shall do so before deciding on the appeal when the punishment is restriction, withholding of privileges, extra duties, forfeiture of pay, or reduction from the fourth or higher pay grade. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, the officer's successor in command, or superior authority may suspend, set aside, or remit any part or amount of the punishment and restore all rights, privileges and property affected. In addition the officer or authority may at any time place the offender on probation and suspend a reduction in grade or forfeiture whether or not executed.

4. The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section, but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

5. When a punishment of forfeiture of pay and allowances is imposed under this section, the forfeiture may apply to pay or allowances accruing on or after that punishment is imposed and to pay and allowances accrued before that date.

89 Acts, ch 82, §2-4 SF 82  
 Subsection 2, paragraph a, subparagraph (3) amended  
 Subsection 2, paragraph b, NEW subparagraph (5)  
 Subsection 2, paragraph c amended

### **29B.18 Jurisdiction of special or summary courts-martial.**

1. Subject to section 29B.16, special courts-martial have jurisdiction to try persons subject to this code for any offense for which they may have been punished under this code and may, under such limitations as the adjutant general may impose by rule, adjudge any one or a combination of the following punishments:

- a. A fine not exceeding one hundred dollars.
- b. Forfeiture of pay and allowances not exceeding one thousand dollars.
- c. A reprimand.
- d. Dismissal or dishonorable discharge.
- e. Reduction of a noncommissioned officer to the ranks.

A special courts-martial shall not try a commissioned officer.

2. a. Subject to section 29B.16, summary courts-martial have jurisdiction to try persons subject to this code, for any offense made punishable by this code.

b. A person with respect to whom summary courts-martial have jurisdiction shall not be brought to trial before a summary court-martial if the person objects, unless under section 29B.14 the person has been permitted and has elected to refuse punishment under that section. If objection to trial by summary court-martial is made by an accused who has not been permitted to refuse punishment under section 29B.14, trial shall be ordered by special or general court-martial, as appropriate.

c. A summary court-martial may, under limitations the adjutant general imposes by rule, adjudge any of the following punishments:

- (1) A fine of not more than fifty dollars for a single offense.
- (2) Forfeiture of not more than twenty days' pay and allowances.
- (3) Reduction of a noncommissioned officer to the ranks.

89 Acts, ch 82, §5 SF 82  
 Subsection 2, paragraph c, subparagraphs (1) and (2) amended

## **CHAPTER 29C**

### **DISASTER SERVICES AND PUBLIC DISORDERS**

#### **29C.20 Contingent fund—disaster aid.**

1. A contingent fund is created in the state treasury for the use of the executive council which may be expended for the purpose of paying the expenses of suppressing an insurrection or riot, actual or threatened, when state aid has been rendered by order of the governor, and for repairing, rebuilding, or restoring state property injured, destroyed, or lost by fire, storm, theft, or unavoidable cause, and for aid to any governmental subdivision in an area declared by the governor to be a disaster area due to natural disasters or to expenditures necessitated by the

governmental subdivision toward averting or lessening the impact of the potential disaster, where the effect of the disaster or action on the governmental subdivision is the immediate financial inability to meet the continuing requirements of local government. Upon application by a governmental subdivision in such an area, accompanied by a showing of obligations and expenditures necessitated by an actual or potential disaster in a form and with further information the executive council requires, the aid may be made in the discretion of the executive council and, if made, shall be in the nature of a loan up to a limit of seventy-five percent of the showing of obligations and expenditures. The loan, without interest, shall be repaid by the maximum annual emergency levy authorized by section 24.6, or by the appropriate levy authorized for a governmental subdivision not covered by section 24.6. The aggregate total of loans shall not exceed one million dollars during a fiscal year. A loan shall not be for an obligation or expenditure occurring more than two years previous to the application.

When a state department or agency requests that moneys from the contingent fund be expended to repair, rebuild, or restore state property injured, destroyed, or lost by fire, storm, theft, or unavoidable cause, the executive council shall consider the original source of the funds for acquisition of the property before authorizing the expenditure. If the original source was other than the general fund of the state, the department or agency shall be directed to utilize moneys from the original source if possible. The executive council shall not authorize the repairing, rebuilding, or restoring of the property from the disaster aid contingent fund if it determines that moneys from the original source are available to finance the project.

2. The proceeds of such loan shall be applied toward the payment of costs and obligations necessitated by such actual or potential disaster and the reimbursement of local funds from which such expenditures have been made. Any such project for repair, rebuilding or restoration of state property for which no specific appropriation has been made, shall, before work is begun, be subject to approval or rejection by the executive council.

3. If the president of the United States, at the request of the governor, has declared a major disaster to exist in this state, the executive council may make financial grants to meet disaster-related necessary expenses or serious needs of local governments adversely affected by the major disaster if those expenses or needs cannot otherwise be met from other means of assistance. The amount of the grant shall not exceed ten percent of the total eligible expenses and is conditional upon the federal government providing at least seventy-five percent of the eligible expenses.

4. If the president, at the request of the governor, has declared a major disaster to exist in this state, the executive council may make financial grants to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster which cannot otherwise adequately be met from other means of assistance. The amount of a financial grant shall not exceed five thousand dollars in the aggregate to an individual or family in any single major disaster declared by the president. All grants authorized to individuals and families will be subject to the federal government providing no less than seventy-five percent of each grant and the declaration of a major disaster in the state by the president of the United States.

5. If the president, at the request of the governor, has declared a major disaster to exist in this state, the executive council may lease or purchase sites and develop such sites to accommodate temporary housing units for disaster victims.

6. For the purposes of this section, “*governmental subdivision*” means any political subdivision of this state.

89 Acts, ch 315, §27 SF 517  
Subsection 1, NEW unnumbered paragraph 2

## CHAPTER 30

### CHEMICAL EMERGENCIES—EMERGENCY RESPONSE COMMISSION

#### 30.1 Definitions.

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

1. “*Commission*” means the Iowa emergency response commission.
2. “*Committee*” means a local emergency planning committee appointed by the commission.
3. “*Emergency Planning and Community Right-to-know Act*” means Pub. L. No. 99-499, Title III, 42 U.S.C. §11001 et seq., as amended to January 1, 1989.

89 Acts, ch 204, §2 SF 512  
NEW section

#### 30.2 Iowa emergency response commission established.

1. The Iowa emergency response commission is established. The commission is responsible directly to the governor. The commission is attached to the department of public defense for routine administrative and support services only.

2. The commission is composed of twelve members appointed by the governor. One member shall be appointed to represent the department of agriculture and land stewardship, one to represent the department of employment services, one to represent the department of justice, one to represent the department of natural resources, one to represent the department of public defense, one to represent the Iowa department of public health, one to represent the department of public safety, one to represent the state department of transportation, one to represent the fire service institute of the Iowa state university of science and technology, and one to represent the office of the governor. Two representatives from private industry shall also be appointed by the governor, subject to confirmation by the senate.

3. The commission members shall be appointed for staggered terms of three years each, beginning and ending as provided in section 69.19. Vacancies shall be filled in the same manner as the original appointments were made.

89 Acts, ch 204, §3 SF 512  
NEW section

#### 30.3 Officers and meetings.

The members of the commission shall select a chairperson and a vice chairperson from their membership. The commission shall meet at least twice per year but may meet as often as necessary. Meetings shall be set by a majority of the commission or upon the call of the chairperson, or in the chairperson’s absence, upon the call of the vice chairperson.

89 Acts, ch 204, §4 SF 512  
NEW section

#### 30.4 Expenses.

The members of the commission are entitled to reimbursement for travel and other necessary expenses incurred in the performance of official duties.

89 Acts, ch 204, §5 SF 512  
NEW section

#### 30.5 Commission powers and duties.

1. The commission has the powers necessary to carry out the functions and duties specified in state law and the Emergency Planning and Community

Right-to-know Act, including the powers to solicit and accept gifts and grants, and to adopt rules pursuant to chapter 17A. All federal funds, grants, and gifts shall be deposited with the treasurer of state and used only for the purposes agreed upon as conditions for receipt of the funds, grants, or gifts.

2. The commission may enter into agreements pursuant to chapter 28E to accomplish any duty imposed upon the commission by the Emergency Planning and Community Right-to-know Act, but the commission shall not compensate any governmental unit for the performance of duties pursuant to such an agreement. Funding for administering the duties of the commission under sections 30.7, 30.8, and 30.9 shall be included in the budgets of the department of employment services, the department of natural resources, and the department of public defense, respectively.

3. The commission may request from any state agency or official the information and assistance necessary to perform the duties of the commission. All state departments, divisions, agencies, and offices shall make available upon request information which is requested and which is not by law confidential.

89 Acts, ch 204, §6 SF 512  
NEW section

### **30.6 Commission duties.**

1. The commission shall designate local emergency planning districts and appoint persons to serve on local emergency planning committees. The commission may, upon request, revise its designations of districts and appointments of committee members.

2. The commission shall supervise and coordinate the activities of the committees.

3. Upon request by a state or local official or any person, the commission shall obtain from a facility owner or operator the emergency and hazardous chemical inventory information which the owner or operator is required to prepare and submit pursuant to section 312 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. §11022, and provide the information to the requesting party.

4. The commission shall make available to the public upon request during normal working hours material safety data sheets, lists of hazardous chemicals, inventory forms, toxic chemical release forms, and follow-up emergency notices in its possession pursuant to section 324 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. §11044.

5. The commission shall perform all other functions and duties as specified in the Emergency Planning and Community Right-to-know Act.

89 Acts, ch 204, §7 SF 512  
NEW section

### **30.7 Duties to be allocated to department of employment services.**

Agreements negotiated by the commission and the department of employment services shall provide for the allocation of duties to the department of employment services as follows:

1. Material safety data sheets or a list for chemicals required to be submitted to the commission under section 311 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. §11021, shall be submitted to the department of employment services. Submission to that department constitutes compliance with the requirement for notification to the commission.

2. Emergency and hazardous chemical inventory forms required to be submitted to the commission under section 312 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. §11022, shall be submitted to the department of employment services. Submission to that department constitutes compliance with the requirement for notification to the commission.

3. The department of employment services shall advise the commission of the failure of any facility owner or operator to submit information as required under sections 311 and 312 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. §11021 and 11022.

4. The department of employment services shall make available to the public upon request during normal working hours the information forms in its possession pursuant to sections 312 and 324 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. §11022 and 11044.

89 Acts, ch 204, §8 SF 512  
NEW section

### **30.8 Duties to be allocated to department of natural resources.**

Agreements negotiated by the commission and the department of natural resources shall provide for the allocation of duties to the department of natural resources as follows:

1. Emergency notifications of releases required to be submitted to the commission under section 304 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. §11004, shall be submitted to the department of natural resources. Submission to that department constitutes compliance with the requirement for notification to the commission.

2. The department of natural resources shall advise the commission of the failure of any facility owner or operator to submit a notification as required under section 304 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. §11004.

3. The department of natural resources shall make available to the public upon request during normal working hours the information in its possession pursuant to section 324 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. §11044.

89 Acts, ch 204, §9 SF 512  
NEW section

### **30.9 Duties to be allocated to department of public defense.**

Agreements negotiated by the commission and the department of public defense shall provide for the allocation of duties to the department of public defense as follows:

1. Comprehensive emergency response plans required to be developed under section 303 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. §11003, shall be submitted to the department of public defense. Committee submission to that department constitutes compliance with the requirement for reporting to the commission. After initial submission, a plan need not be resubmitted unless revisions are requested by the commission. The department of public defense shall review the plan on behalf of the commission and shall incorporate the provisions of the plan into its responsibilities under chapter 29C.

2. The department of public defense shall advise the commission of the failure of any committee to submit an initial comprehensive emergency response plan or a revised plan requested by the commission.

3. The department of public defense shall make available to the public upon request during normal working hours the information in its possession pursuant to section 324 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. §11044.

89 Acts, ch 204, §10 SF 512  
NEW section

### **30.10 Powers of local emergency planning committees.**

The local emergency planning committee appointed by the commission for each local emergency planning district has the powers necessary to carry out the

functions and duties specified in state law and the Emergency Planning and Community Right-to-know Act.

89 Acts, ch 204, §11 SF 512  
NEW section

### 30.11 Liability of committee members.

A person appointed as a member of a local emergency planning committee is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the functions and duties specified in the state law and the Emergency Planning and Community Right-to-know Act, except for acts and omissions which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

89 Acts, ch 204, §12 SF 512  
NEW section

### 30.12 Civil action.

1. The commission may commence a civil action against an owner or operator of a facility who has violated federal requirements to do any of the following:

a. Provide notification under section 302(c) of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. §11002(c).

b. Submit a material safety data sheet or a list under section 311(a) of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. §11021(a).

c. Make available information requested under section 311(c) of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. §11021(c).

d. Complete and submit an inventory form under section 312(a) of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. §11022(a), containing tier I information unless tier II information is submitted for the same period of time.

e. Provide information under section 303(d) of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. §11003(d).

f. Submit tier II information under section 312(e)(1) of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. §11022(e)(1).

2. The Iowa district court shall have jurisdiction over actions brought under this section and may grant any appropriate relief.

89 Acts, ch 204, §13 SF 512  
NEW section

## CHAPTER 37

### MEMORIAL HALLS AND MONUMENTS FOR SOLDIERS, SAILORS, AND MARINES

#### 37.9 Commissioners appointed—vacancies—request for appropriation.

When the proposition to erect any such building or monument has been carried by a majority vote, the board of supervisors or the city council, as the case may be, shall appoint a commission consisting of five members, in the manner and with the qualifications provided in this chapter, which shall have charge and supervision of the erection of the building or monument, and when erected, the management and control of the building or monument.

On or before January 15 of each year, a commission which manages and controls a county memorial hospital shall prepare and submit to the county auditor a request for an appropriation for the next fiscal year from the general fund for the operation and maintenance of the county memorial hospital. On or before January 20, the county auditor shall submit the request to the county board of supervisors. The board of supervisors may adjust the commission's request and

may make an appropriation for the county memorial hospital as provided in section 331.427, subsection 2, paragraph "b". For the purposes of public notice, the commission is a certifying board and is subject to the requirements of sections 24.3 through 24.5, sections 24.9 through 24.12, and section 24.16.

The term of office of each member shall be three years, and any vacancies occurring in the membership shall be filled in the same manner as the original appointment.

Commencing with the commissioners appointed to take office after January 1, 1952, one commissioner shall be appointed for a term of one year, two commissioners shall be appointed for a term of two years, and two commissioners shall be appointed for a term of three years, or in each instance until a successor is appointed and qualified. Thereafter, the successors in each instance shall hold office for a term of three years.

The commissioners having the management and control of a memorial hospital shall, within ten days after their appointment, qualify by taking the usual oath of office, but no bonds shall be required of them except as hereinafter provided. The commissioners shall organize by electing a chairperson, secretary, and treasurer. The secretary and treasurer shall each file with the chairperson of the commission a surety bond in such sum as the commission may require, with sureties approved by the commission, for the use and benefit of the memorial hospital. The reasonable costs of such bonds shall be paid from operating funds of the hospital. The secretary shall immediately report to the county auditor and county treasurer the names of the chairperson, secretary, and treasurer of the commission. The commission shall meet at least once each month. Three members of the commission shall constitute a quorum for the transaction of business. The secretary shall keep a complete record of its proceedings.

Memorial hospital funds shall be received, disbursed, and accounted for in the same manner and by the same procedure as provided by section 347.12.

89 Acts, ch 296, §9 SF 141

Unnumbered paragraph 4 amended

### **37.10 Qualification—appointment.**

Each commissioner shall be an honorably discharged soldier, sailor, marine, airman, or coast guard member and be a resident of the city in which the memorial hall or monument is located or live within the county if the memorial hall or monument is located outside of a city or is a joint memorial as provided in this chapter.

Each commission member shall be appointed by the mayor with approval of the council or by the chairperson of the county board of supervisors in the case of a county or joint memorial building or monument.

89 Acts, ch 296, §10 SF 141

Section stricken and rewritten

### **37.11 through 37.14 Repealed by 89 Acts, ch 296, §96. SF 141**

**37.19 Record—monuments—how inscribed.** Repealed by 89 Acts, ch 296, §96. SF 141

## CHAPTER 38

### IOWA PEACE INSTITUTE

#### 38.5 Funding.

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. The institute is a department for purposes of chapter 8.

89 Acts, ch 319, §36 HF 774  
Section amended

## CHAPTER 43

### PARTISAN NOMINATIONS—PRIMARY ELECTION

#### 43.4 Political party precinct caucuses.

Delegates to county conventions of political parties and party committee members shall be elected at precinct caucuses held not later than the fourth Monday in February of each even-numbered year. The date shall be at least eight days earlier than the scheduled date for any meeting, caucus or primary which constitutes the first determining stage of the presidential nominating process in any other state, territory or any other group which has the authority to select delegates in the presidential nomination. The state central committees of the political parties shall set the date for their caucuses. The county chairperson of each political party shall issue the call for the caucuses. The county chairperson shall file with the commissioner the meeting place of each precinct caucus at least seven days prior to the date of holding the caucus.

There shall be selected among those present at a precinct caucus a chairperson and a secretary who shall within seven days certify to the county central committee the names of those elected as party committee members and delegates to the county convention.

When the rules of a political party require the selection and reporting of delegates selected as part of the presidential nominating process, or the rules of a political party require the tabulation and reporting of the number of persons attending the caucus favoring each presidential candidate, it is the duty of a person designated as provided by the rules of that political party to report the results of the precinct caucus as directed by the state central committee of that political party. When the person designated to report the results of the precinct caucus reports the results, representatives of each candidate, if they so choose, may accompany the person as the results are being reported to assure that an accurate report of the proceedings is reported. If ballots are used at the precinct caucus, representatives of each candidate or other persons attending the precinct caucus may observe the tabulation of the results of the balloting.

Within fourteen days after the date of the caucus the county central committee shall certify to the county commissioner the names of those elected as party committee members and delegates to the county convention.

The central committee of each political party shall notify the delegates and committee members so elected and certified of their election and of the time and place of holding the county convention. Such conventions shall be held either preceding or following the primary election but no later than ten days following the primary election and shall be held on the same day throughout the state.

89 Acts, ch 136, §2 SF 371  
Section amended

#### 43.6 Nomination of U. S. senators, state and county officers.

Candidates for the office of senator in the congress of the United States, the offices listed in section 39.9, county supervisor and the offices listed in section 39.17 shall be nominated in the year preceding the expiration of the term of office of the incumbent.

1. When a vacancy occurs in the office of senator in the congress of the United States, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, or attorney general and section 69.13, subsection 1, requires that the vacancy be filled for the balance of the unexpired term at a general election, candidates for the office shall be nominated in the preceding primary election if the vacancy occurs eighty-nine or more days before the date of that primary election. If the vacancy occurs less than one hundred four days before the date of that primary election, the state commissioner shall accept nomination papers for that office only until five o'clock p.m. on the seventy-fourth day before the primary election, the provisions of section 43.11 notwithstanding. If the vacancy occurs later than eighty-nine days before the date of that primary election, but not less than eighty-nine days before the date of the general election, the nominations shall be made in the manner prescribed by this chapter for filling vacancies in nominations for offices to be voted for at the general election.

2. When a vacancy occurs in the office of county supervisor or any of the offices listed in section 39.17 and section 69.13, subsection 2, requires that the vacancy be filled for the balance of the unexpired term at a general election, candidates for the office shall be nominated in the preceding primary election if the vacancy occurs seventy-four or more days before the date of that primary election. If the vacancy occurs less than eighty-nine days before the date of that primary election, the commissioner shall accept nomination papers for that office only until five o'clock p.m. on the sixty-third day before the primary election, the provisions of section 43.11 notwithstanding. If the vacancy occurs later than seventy-four days before the date of that primary election, but not less than seventy-four days before the date of the general election, the nominations shall be made in the manner prescribed by this chapter for filling vacancies in nominations for offices to be voted for at the general election.

89 Acts, ch 136, §3 SF 371  
Subsections 1 and 2 amended

#### **43.11 Filing of nomination papers.**

Nomination papers in behalf of a candidate shall be filed:

1. For an elective county office, in the office of the county commissioner not earlier than ninety-two days nor later than five o'clock p.m. on the sixty-ninth day before the day fixed for holding the primary election.

2. For United States senator, for an elective state office, for representative in Congress, and for member of the general assembly, in the office of the state commissioner not earlier than ninety-nine days nor later than five o'clock p.m. on the eighty-first day before the day fixed for holding the primary election.

89 Acts, ch 136, §4 SF 371  
Section amended

#### **43.15 Requirements in signing.**

The following requirements shall be observed in the signing and preparation of nomination blanks:

1. A signer may sign nomination papers for more than one candidate for the same office, and the signature is not invalid solely because the signer signed nomination papers for one or more other candidates for the office.

2. Each signer shall add the signer's residence, with street and number, if any, and the date of signing.

3. All signers, for all nominations, of each separate part of a nomination paper, shall reside in the same county, representative or senatorial district for members of the general assembly. In counties where the supervisors are elected from districts, signers of nomination petitions for supervisor candidates shall reside in the supervisor district the candidate seeks to represent.

4. When more than one sheet is used, the sheets shall be neatly arranged and securely fastened together before filing, and shall be considered one nomination paper.

5. Only one candidate shall be petitioned for or nominated in the same nomination paper.

89 Acts, ch 136, §5, 6 SF 371  
 Subsection 1 stricken and rewritten  
 Subsection 3 amended

#### **43.16 Return of papers, additions not allowed.**

After a nomination paper has been filed, it shall not be returned to the person who has filed the paper, nor shall any signature or other information be added to the nomination paper.

A person who has filed nomination petitions with the state commissioner may withdraw as a candidate not later than the seventy-sixth day before the primary election by notifying the state commissioner in writing.

A person who has filed nomination papers with the commissioner may withdraw as a candidate not later than the sixty-seventh day before the primary election by notifying the commissioner in writing.

The name of a candidate who has withdrawn or died at a time in accordance with this section shall be omitted from the certificate furnished by the state commissioner under section 43.22 and omitted from the primary election ballot.

89 Acts, ch 136, §7 SF 371  
 Unnumbered paragraphs 2 and 3 amended

#### **43.21 Township office.**

The name of a candidate for a township office shall be printed on the official primary ballot of the candidate's party if the candidate files the candidate's personal affidavit, in the form prescribed by section 43.18, with the commissioner not earlier than ninety-two days nor later than five o'clock p.m. of the sixty-ninth day before the primary election. If before that time there is presented to the commissioner a nomination paper signed by at least ten eligible electors of the township requesting that the name of any person be placed on the primary ballot as a candidate for a township office, and the nomination paper is not accompanied by the candidate's personal affidavit, the commissioner shall advise the candidate that such an affidavit is required before the candidate's name may be placed on the ballot.

89 Acts, ch 136, §8 SF 371  
 Section amended

#### **43.22 Nominations certified.**

The state commissioner shall, at least sixty-nine days before a primary election, furnish to the commissioner of each county a certificate under the state commissioner's hand and seal, which certificate shall show:

1. The name and post-office address of each person for whom a nomination paper has been filed in the state commissioner's office, and for whom the voters of said county have the right to vote at said election.
2. The office for which such person is a candidate.
3. The political party from which such person seeks a nomination.

89 Acts, ch 136, §9 SF 371  
 Unnumbered paragraph 1 amended

#### **43.23 Death or withdrawal of primary candidate.**

1. If a person who has filed nomination papers with the state commissioner as a candidate in a primary election dies or withdraws up to the seventy-sixth day before the primary election, the appropriate convention or central committee of that person's political party may designate one additional primary election candidate for the nomination that person was seeking, if the designation is

submitted to the state commissioner in writing by five o'clock p.m. on the seventy-first day before the date of the primary election. The name of any candidate so submitted shall be included in the appropriate certificate or certificates furnished by the state commissioner under section 43.22.

2. If a person who has filed nomination papers with the commissioner as a candidate in a primary election dies or withdraws up to the sixty-seventh day before the primary election, the appropriate convention or central committee of that person's political party may designate one additional primary election candidate for the nomination that person was seeking, if the designation is submitted to the commissioner in writing by five o'clock p.m. on the sixty-third day before the primary election. The name of any candidate so submitted shall be placed on the appropriate ballot or ballots by the commissioner.

89 Acts, ch 136, §10 SF 371  
Section amended

#### **43.24 Objections to nomination petitions or certificates of nomination.**

1. *Written objections required.* Nomination petitions or certificates of nomination filed under this chapter which are apparently in conformity with the law are valid unless objection is made in writing.

Objections to the legal sufficiency of a nomination petition or certificate of nomination filed or issued under this chapter or to the eligibility of a candidate may be filed in writing by any person who would have the right to vote for the candidate for the office in question.

Objections shall be filed with the officer with whom the nomination petition or certificate of nomination was filed, and within the following time:

a. Those filed with the state commissioner, not less than seventy-four days before the date of the election.

b. Those filed with the commissioner, not less than sixty-four days before the date of the election.

c. Objections to nominations to fill vacancies at a special election held under section 69.14, under which the forty-day notice of election provision applies, shall be filed with the state commissioner not less than fifteen days prior to the date set for the special election. If the forty-day notice provision does not apply, objections to nominations to fill vacancies at a special election held under section 69.14 may be filed any time prior to the date set for the special election.

d. Those filed with the city clerk under this chapter, at least thirty-six days before the municipal election.

#### *2. Notice of objections.*

a. When objections have been filed, notice shall be mailed within seventy-two hours by certified mail to the candidate affected, addressed to the candidate's place of residence as stated in the candidate's affidavit of candidacy or in the certificate of nomination, stating that objections have been made, the nature of the objections, and the time and place the objections will be considered.

b. If an objection is filed to a nomination to fill a vacancy at a special election held under section 69.14, under which the forty-day notice of election provision of section 69.14 does not apply, notice of the objection shall be made to the candidate by the state commissioner as soon as practicable. Under this paragraph, failure to notify a candidate of an objection to the candidate's nomination prior to the date set for the special election does not invalidate the hearing conducted under subsection 3. The hearing to an objection shall proceed as quickly as possible to expedite the special election.

3. *Hearing.* Objections filed with the state commissioner shall be considered by the secretary of state, auditor of state, and attorney general. However, if the objection is to the nomination petition, certificate of nomination, or eligibility of

one or more of those officers, those officers shall be replaced, respectively, by the treasurer of state, secretary of agriculture, and lieutenant governor for the hearing.

Objections filed with the commissioner shall be considered by three elected county officers whose eligibility is not in question. The chairperson of the board of supervisors shall appoint the three elected officers unless the chairperson is ineligible, in which case, the appointments shall be made by the county auditor. In either case, a majority vote shall decide the issue.

Objections filed with the city clerk shall be considered by the mayor and clerk and one member of the council chosen by the council by ballot, and a majority decision shall be final; but if the objection is to the certificate of nomination of either of those city officials, that official shall not pass upon said objection, but that official's place shall be filled by a member of the council against whom no objection exists, chosen as above.

89 Acts, ch 136, §11 SF 371  
Subsection 1, paragraphs a, b and d amended

### **43.29 Form of name on ballot.**

The name of a candidate printed on the ballot shall not include parentheses, quotation marks, or any personal or professional title.

89 Acts, ch 136, §12 SF 371  
NEW section

### **43.30 Sample ballots.**

The commissioner shall take from the official printed ballots of each precinct a suitable number of ballots of each political party, and shall write or stamp, in red ink, near the top of each ballot, the words "sample ballot" and shall sign or stamp the commissioner's official signature thereunder. Said ballots shall be delivered to the precinct election officials, but shall not be voted, received, or counted. Said precinct election officials shall, before the opening of the polls, cause said sample ballots to be posted in and about the polling places.

The commissioner may make sample ballots available to the public. The sample ballots shall be stamped with the words "sample ballot" and a facsimile of the commissioner's signature. A reasonable fee may be charged for printing costs if a person requests multiple copies of sample ballots.

89 Acts, ch 136, §13 SF 371  
NEW unnumbered paragraph 2

### **43.45 Canvass of votes.**

Upon the closing of the polls the precinct election officials shall immediately publicly canvass the vote in the following manner:

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.

89 Acts, ch 136, §14 SF 371  
Unnumbered paragraph 1 amended

#### **43.48 Elector may ascertain vote cast.**

Any elector of the county shall have the right, before the day fixed for canvassing the returns, to ascertain the vote cast for any candidate in any precinct in the county, as shown on the outside of the envelope containing the tally list.

89 Acts, ch 136, §15 SF 371  
Section amended

#### **43.54 Right to place on ballot.**

Each candidate nominated pursuant to section 43.53 is entitled to have the candidate's name printed on the official ballot to be voted for at the general election if the candidate files an affidavit in the form required by section 43.67 not later than five o'clock p.m. on the seventh day following the completion of the canvass.

89 Acts, ch 136, §16 SF 371  
Section amended

#### **43.56 Primary election recount provisions.**

Recounts of votes for primary elections shall be conducted following the procedure outlined in section 50.48. However, if a recount is requested for an office for which no candidate has received the required thirty-five percent to be nominated, the recount board shall consist of the following persons:

1. One person chosen by the candidate requesting the recount, who shall be named in the request.
2. One person chosen by the candidate who received the highest number of votes for the nomination being recounted. However, if the candidate who requested the recount received more votes than anyone else for the nomination, the candidate who received the second highest number of votes shall designate this person to serve on the recount board.
3. A third person mutually agreeable to the board members designated by the candidates.

A bond is not necessary for a primary election recount under these circumstances if the difference between the number of votes needed to be nominated and the number of votes received by the candidate requesting the recount is less than fifty votes or one percent of the total number of votes cast for the nomination in question, whichever is greater. If a bond is required, the bond shall be in the amount specified in section 50.48, subsection 2.

89 Acts, ch 136, §17 SF 371  
NEW section

#### **43.57 and 43.58 Repealed by 81 Acts, ch 34, §48. See §50.48.**

#### **43.67 Nominee's right to place on ballot.**

Each candidate nominated pursuant to section 43.66 is entitled to have the candidate's name printed on the official ballot to be voted at the general election without other certificate, except that a candidate whose name was not printed on the official primary election ballot must execute and deliver to the commissioner

or the state commissioner, as the case may be, an affidavit 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 ....., as the candidate of the ..... (name of political party) and hereby request that my name be so 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.

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.

.....  
(Signed)

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

.....  
(Name)

.....  
(Official title)

Each candidate required to execute the foregoing affidavit shall be so notified by the commissioner immediately upon completion of the canvass held under section 43.49, or by the state commissioner immediately upon completion of the canvass held under section 43.63 as the case may be. If the candidate does not execute and deliver the affidavit by five o'clock p.m. on the seventh day following completion of such canvass, the commissioner or state commissioner shall not cause that candidate's name to be placed upon the official general election ballot.

89 Acts, ch 136, §18 SF 371  
Unnumbered paragraph 1 amended

**43.73 State commissioner to certify nominees.**

Not less than sixty-nine days before the general election the state commissioner shall certify to each commissioner, under separate party headings, the name of each person nominated as shown by the official canvass made by the executive council, or as certified to the state commissioner by the proper persons when any person has been nominated by a convention or by a party committee, or by petition, the office to which the person is nominated, and the order in which the tickets of the several political parties shall appear on the official ballot.

The state commissioner shall similarly certify to the appropriate commissioner or commissioners at the earliest practicable time the names of nominees for a special election, called under section 69.14, submitted to the state commissioner pursuant to section 43.78, subsection 4.

89 Acts, ch 136, §19 SF 371  
Unnumbered paragraph 1 amended

**43.76 Withdrawal of nominated candidates.**

1. A candidate nominated in a primary election for any office for which nomination papers are required to be filed with the state commissioner may withdraw as a nominee for that office on or before, but not later than, the eighty-ninth day before the date of the general election by so notifying the state commissioner in writing.

2. A candidate nominated in a primary election for any office for which nomination papers are required to be filed with the commissioner may withdraw as a nominee for that office on or before, but not later than, the seventy-fourth day before the date of the general election by so notifying the commissioner in writing.

89 Acts, ch 136, §20 SF 371  
Section amended

#### **43.77 What constitutes a ballot vacancy.**

A vacancy on the general election ballot exists when any political party lacks a candidate for an office to be filled at the general election because:

1. No person filed under section 43.11 as a candidate for the party's nomination for that office in the primary election, or all persons who filed under section 43.11 as candidates for the party's nomination for that office in the primary election subsequently withdrew as candidates, were found to lack the requisite qualifications for the office or died before the date of the primary election, and no candidate received a sufficient number of write-in votes to be nominated.

2. The primary election was inconclusive as to that office because no candidate for the party's nomination for that office received the number of votes required by section 43.52, 43.53 or 43.65, whichever is applicable.

3. The person nominated in the primary election as the party's candidate for that office subsequently withdrew as permitted by section 43.76, was found to lack the requisite qualifications for the office, or died, at a time not later than the eighty-ninth day before the date of the general election in the case of an office for which nomination papers must be filed with the state commissioner and not later than the seventy-fourth day before the date of the general election in the case of an office for which nomination papers must be filed with the county commissioner.

4. A vacancy has occurred in the office of senator in the Congress of the United States, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, or attorney general, under the circumstances described in section 69.13, subsection 1, less than eighty-nine days before the primary election and not less than eighty-nine days before the general election, or in the office of county supervisor or any of the offices listed in section 39.17, under the circumstances described in section 69.13, subsection 2, less than seventy-four days before the primary election and not less than seventy-four days before the general election.

89 Acts, ch 136, §21 SF 371  
Subsections 3 and 4 amended

#### **43.78 Filling ballot vacancies.**

1. A vacancy on the general election ballot may be filled by the political party in whose ticket the vacancy exists, as follows:

a. For senator in the Congress of the United States or any office listed in section 39.9, by the party's state convention, which may be reconvened by the state party chairperson if the vacancy occurs after the convention has been held or too late to be filled at the time it is held. However, a vacancy so occurring with respect to the offices of secretary of state, auditor of state, treasurer of state or secretary of agriculture may be filled by the party's state central committee in lieu of reconvening the state convention.

b. For representative in the Congress of the United States, by the party's congressional district convention, which may be convened or reconvened as appropriate by the state party chairperson.

c. For senator or representative in the general assembly, by the party precinct committee members whose precincts lie within the senatorial or representative district involved, who shall be convened or reconvened as appropriate by the state party chairperson. The party's state constitution or bylaws may allow the voting strength of each precinct represented at such a convention to be made proportion-

ate to the vote cast for the party's candidate for the office in question in the respective precincts at the last general election for that office.

d. For any office to be filled by the voters of an entire county, by the party's county convention, which may be reconvened by the county party chairperson if the vacancy occurs after the convention has been held or too late to be filled at the time it is held.

e. For the office of county supervisor elected by the voters of a district within the county, by the delegates to the party's county convention who represent the precincts lying within that district, who shall be convened or reconvened as appropriate by the county party chairperson.

f. For any other partisan office filled by the voters of a subdivision of a county, by those members of the party's county central committee who represent the precincts lying within that district, who shall be convened or reconvened as appropriate by the county party chairperson. However this paragraph shall not apply to partisan city offices in special charter cities for which candidates are nominated under this chapter, but such ballot vacancies shall be filled as provided by section 43.116.

2. The name of any candidate designated to fill a vacancy on the general election ballot in accordance with subsection 1, paragraph "a", "b", or "c" shall be submitted in writing to the state commissioner not later than five o'clock p.m. on the eighty-first day before the date of the general election.

3. The name of any candidate designated to fill a vacancy on the general election ballot in accordance with subsection 1, paragraph "d", "e", or "f" shall be submitted in writing to the commissioner not later than five o'clock p.m. on the sixty-ninth day before the date of the general election.

4. Political party candidates for a vacant seat in the United States house of representatives, the board of supervisors, the elected county offices, or the general assembly which is to be filled at a special election called pursuant to section 69.14 or 69.14A shall be nominated in the manner provided by subsection 1 of this section for filling a vacancy on the general election ballot for the same office. The name of any candidate so nominated shall be submitted in writing to the state commissioner, as required by section 43.88, at the earliest practicable time.

89 Acts, ch 136, §22 SF 371; 89 Acts, ch 215, §1 HF 522  
Subsections 2, 3, and 4 amended

#### **43.79 Death of candidate after time for withdrawal.**

The death of a candidate nominated as provided by law for any office to be filled at a general election, during the period beginning on the eighty-eighth day before the general election, in the case of any candidate whose nomination papers were filed with the state commissioner, or beginning on the seventy-third day before the general election, in the case of any candidate whose nomination papers were filed with the commissioner, and ending on the last day before the general election shall not operate to remove the deceased candidate's name from the general election ballot. If the deceased candidate was seeking the office of senator or representative in the Congress of the United States, governor, lieutenant governor, attorney general, senator or representative in the general assembly or county supervisor, section 49.58 shall control. If the deceased candidate was seeking any other office, and as a result of the candidate's death a vacancy is subsequently found to exist, the vacancy shall be filled as provided by chapter 69.

89 Acts, ch 136, §23 SF 371  
Section amended

#### **43.123 Nomination of lieutenant governor.**

Notwithstanding this chapter and any other statute relating to the nomination of a person for the office of lieutenant governor, the nomination of a person for the office of lieutenant governor for the general election in the year 1990 and each

four years thereafter shall be held at the state convention of the political party. The nomination of a person for the office of lieutenant governor by a nonparty political organization shall be the procedure specified in chapter 44.

89 Acts, ch 83, §15 SF 112  
Section amended

## CHAPTER 44

### NOMINATIONS BY NONPARTY POLITICAL ORGANIZATIONS

#### 44.4 Nominations and objections—time and place of filing.

Nominations made pursuant to 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 ninety-nine days nor later than five o'clock p.m. on the eighty-first day before 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 before the date of an election called upon at least forty days' notice and not less than seven days before 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 more than ninety-two days nor later than five o'clock p.m. on the sixty-ninth day before the date of the general election. Nominations made pursuant to this chapter or chapter 45 for city office shall be filed not more than seventy-two days nor later than five o'clock p.m. on the forty-seventh day before the city election with the city clerk, who shall process them as provided by law.

Objections to the legal sufficiency of a certificate of nomination or nomination petition 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 the certificate or petition is filed and within the following time:

1. Those filed with the state commissioner, not less than seventy-four days before the date of election.
2. Those filed with the commissioner, not less than sixty-four days before the date of election.
3. Those filed with the city clerk, at least forty-two days before 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.

89 Acts, ch 136, §24 SF 371  
Section amended

#### 44.9 Withdrawals.

Any candidate named under this chapter may withdraw the candidate's nomination by a written request filed as follows:

1. In the office of the state commissioner, at least seventy-four days before the date of the election.
2. In the office of the proper commissioner, at least sixty-four days before the date 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.

89 Acts, ch 136, §25 SF 371

Unnumbered paragraph 1 and subsections 1 and 2 amended

#### **44.11 Vacancies filled.**

If a candidate named under this chapter declines a nomination, or dies before election day, or if a certificate of nomination is held insufficient or inoperative by the officer with whom it is required to be filed, or in case any objection made to a certificate of nomination, or to the eligibility of any candidate named in the certificate, is sustained by the board appointed to determine such questions, the vacancy or vacancies may be filled by the convention, or caucus, or in such manner as such convention or caucus has previously provided. The vacancy or vacancies shall be filled not less than seventy-four days before the election in the case of nominations required to be filed with the state commissioner, not less than sixty-four days before the election in the case of nominations required to be filed with the commissioner, not less than thirty-five days before the election in the case of nominations required to be filed in the office of the school board secretary, and not less than forty-two days before the election in the case of nominations required to be filed with the city clerk.

89 Acts, ch 136, §26 SF 371

Section amended

## CHAPTER 45

### NOMINATIONS BY PETITION

#### **45.1 Nominations by petition.**

1. Nominations for candidates for president and vice president and for state offices may be made by nomination papers signed by not less than one thousand eligible electors of the state. For candidates for president and vice president, the names and addresses of the candidates for presidential electors, one from each congressional district and two from the state at large, shall be printed on the face of or attached to each page of the nomination petition.

2. Nominations for candidates for offices filled by the voters of a county, district, or other division may be made by papers signed by eligible electors residing in the county, district, or division equal in number to at least two percent of the total vote received by all candidates for president of the United States or governor, as the case may be, at the last preceding general election in the county, district, or division.

3. Nominations for an office filled by the voters of a township may be made by papers signed by not less than twenty-five eligible electors, residents of the township.

4. Nominations for candidates for elective offices in cities where the council has adopted nominations under this chapter may be submitted as follows:

a. Except as otherwise provided in subsection 5, in cities having a population of three thousand five hundred or greater according to the most recent federal decennial census, nominations may be made by nomination papers signed by not less than twenty-five eligible electors who are residents of the city or ward.

b. In cities having a population of one hundred or greater, but less than three thousand five hundred, according to the most recent federal decennial census, nominations may be made by nomination papers signed by not less than ten eligible electors who are residents of the city or ward.

c. In cities having a population less than one hundred according to the most recent federal decennial census, nominations may be made by nomination papers signed by not less than five eligible electors who are residents of the city.

5. Nominations for candidates, other than partisan candidates, for elective offices in special charter cities subject to section 43.112 may be submitted as follows:

a. For the office of mayor and alderman at large, nominations may be made by nomination papers signed by eligible electors residing in the city equal in number to at least two percent of the total vote received by all candidates for mayor at the last preceding city election.

b. For the office of ward alderman, nominations may be made by nomination papers signed by eligible electors residing in the ward equal in number to at least two percent of the total vote received by all candidates for ward alderman in that ward at the last preceding city election.

89 Acts, ch 136, §27 SF 371  
Subsection 1 amended

**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 shall not sign it. A person may sign nomination petitions under this chapter for more than one candidate for the same office, and the signature is not invalid solely because the person signed nomination petitions for one or more other candidates for the office.

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 by ..... on 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.

89 Acts, ch 136, §28 SF 371  
Unnumbered paragraph 1 amended and divided

## CHAPTER 46

### NOMINATION AND ELECTION OF JUDGES

#### 46.12 Notification of vacancy and resignation.

When a vacancy occurs or will occur within one hundred twenty days in the supreme court, the court of appeals, or district court, the state commissioner of elections shall forthwith so notify the chairperson of the proper judicial nominating commission. The chairperson shall call a meeting of the commission within ten days after such notice; if the chairperson fails to do so, the chief justice shall call such meeting.

When a judge of the supreme court, court of appeals or district court resigns, the judge shall submit a copy of the resignation to the state commissioner of elections at the time the judge submits the resignation to the governor; and when a judge of the supreme court, court of appeals or district court dies, the clerk of district court of the county of the judge's residence shall in writing forthwith notify the state commissioner of elections of such fact.

89 Acts, ch 18, §1 SF 202  
Unnumbered paragraph 1 amended

#### 46.14 Nomination.

Each judicial nominating commission shall carefully consider the individuals available for judge, and within sixty days after receiving notice of a vacancy shall certify to the governor and the chief justice the proper number of nominees, in alphabetical order. Such nominees shall be chosen by the affirmative vote of a majority of the full statutory number of commissioners upon the basis of their qualifications and without regard to political affiliation. Nominees shall be members of the bar of Iowa, shall be residents of the state or district of the court to which they are nominated, and shall be of such age that they will be able to serve an initial and one regular term of office to which they are nominated before reaching the age of seventy-two years. Nominees for district judge shall file a certified application form, to be provided by the supreme court, with the chairperson of the district judicial nominating commission. No person shall be eligible for nomination by a commission as judge during the term for which the person was elected or appointed to that commission. Absence of a commissioner or vacancy upon the commission shall not invalidate a nomination. The chairperson of the commission shall promptly certify the names of the nominees, in alphabetical order, to the governor and the chief justice.

89 Acts, ch 212, §1 HF 791  
Section amended

#### 46.20 Declaration of candidacy.

At least one hundred four days before the judicial election preceding expiration of the initial or regular term of office, a judge of the supreme court, court of appeals, or district court including district associate judges, or a clerk of the district court who is required to stand for retention under section 602.1216 may file a declaration of candidacy with the state commissioner of elections to stand for retention or rejection at that election. If a judge or clerk fails to file the declaration, the office shall be vacant at the end of the term. District associate judges filing the declaration shall stand for retention in the judicial election district of their residence.

89 Acts, ch 136, §29 SF 371  
Section amended

#### 46.21 Conduct of elections.

At least sixty-nine days before each judicial election, the state commissioner of elections shall certify to the county commissioner of elections of each county a list

of the judges of the supreme court, court of appeals, and district court including district associate judges, and clerks of the district court to be voted on in each county at that election. The county commissioner of elections shall place the names upon the ballot in the order in which they appear in the certificate, unless only one county is voting thereon. The state commissioner of elections shall rotate the names in the certificate by county, or the county commissioner of elections shall rotate them upon the ballot by precinct if only one county is voting thereon. The names of all judges and clerks to be voted on shall be placed upon one ballot, which shall be in substantially the following form:

STATE OF IOWA  
JUDICIAL BALLOT  
(Date)

VOTE ON ALL NAMES BY PLACING AN X IN THE APPROPRIATE BOX AFTER EACH NAME.

SUPREME COURT

Shall the following judges of the Supreme Court be retained in office?

CANDIDATE'S NAME      YES       NO   
CANDIDATE'S NAME      YES       NO

COURT OF APPEALS

Shall the following judges of the Court of Appeals be retained in office?

CANDIDATE'S NAME      YES       NO   
CANDIDATE'S NAME      YES       NO

DISTRICT COURT

Shall the following judge or associate judge of the District Court be retained in office?

CANDIDATE'S NAME      YES       NO

Shall the following clerk of the District Court be retained in office?

CANDIDATE'S NAME      YES       NO

89 Acts, ch 136, §30 SF 371  
Unnumbered paragraph 1 amended

CHAPTER 47

ELECTION COMMISSIONERS

47.2 County commissioner of elections.

1. The county auditor of each county is designated as the county commissioner of elections in each county. The county commissioner of elections shall conduct voter registration pursuant to chapter 48 and conduct all elections within the county.

2. When an election is to be held as required by law or is called by a political subdivision of the state and the political subdivision is located in more than one county, the county commissioner of elections of the county having the greatest taxable base within the political subdivision shall conduct that election. The county commissioners of elections of the other counties in which the political

subdivision is located shall co-operate with the county commissioner of elections who is conducting the election.

3. The commissioner may designate as a deputy county commissioner of elections any officer of a political subdivision who is required by law to accept nomination papers filed by candidates for office in that political subdivision, and when so designated that person shall assist the commissioner in administering elections conducted by the commissioner for that subdivision. The designation of a person as a deputy commissioner of elections pursuant to this section, once made, shall continue in effect until the designation is withdrawn by the commissioner.

4. The commissioner shall assign each local public measure a letter for identification purposes. The public measure on the ballot shall be identified by the letter.

The county commissioner who is responsible under subsection 2 for conducting the elections held for a political subdivision which lies in more than one county shall assign the letter to the public measure. The county commissioners of elections of the other counties in which the political subdivision is located shall not assign the same letter to a local public measure on the ballot in their counties during the same election.

5. The office of county auditor or county commissioner of elections in each county shall be open for at least eight hours on the Saturday preceding a general election, primary election, or special election called by the governor for the purpose of receiving absentee ballots and conducting other official business relating to the election.

6. On the final date for filing nomination papers in the commissioner's office the office shall be open until the time for receiving nomination papers has passed.

89 Acts, ch 136, §31 SF 371  
NEW subsection 6

#### **47.6 Dates for special elections.**

1. The governing body of any political subdivision which has authorized a special election to which section 39.2 is applicable shall by written notice inform the commissioner who will be responsible for conducting the election of the proposed date of the special election. If a public measure will appear on the ballot at the special election the governing body shall submit the complete text of the public measure to the commissioner with the notice of the proposed date of the special election.

If the proposed date of the special election coincides with the date of a regularly scheduled election, the notice shall be given no later than five o'clock p.m. on the last day on which nomination papers may be filed for the regularly scheduled election. Otherwise, the notice shall be given at least thirty days in advance of the date of the proposed special election. Upon receiving the notice, the commissioner shall promptly give written approval of the proposed date unless it appears that the special election, if held on that date, would conflict with a regular election or with another special election previously scheduled for that date.

2. For the purpose of this section, a conflict between two elections exists only when one of the elections would require use of precinct boundaries which differ from those to be used for the other election, or when some but not all of the qualified electors of any precinct would be entitled to vote in one of the elections and all of the qualified electors of the same precinct would be entitled to vote in the other election. Nothing in this subsection shall deny a commissioner discretionary authority to approve holding a special election on the same date as another election, even though the two elections may be defined as being in conflict, if the commissioner concludes that to do so will cause no undue difficulties.

89 Acts, ch 136, §32 SF 371  
Subsection 1 amended and divided

## CHAPTER 48

## PERMANENT REGISTRATION

**48.21 Voter registration forms in income tax returns and booklets.**

The director of the department of revenue and finance shall insert securely in each individual income tax return form or instruction booklet two voter registration forms, designed according to rules adopted by the state voter registration commission.

89 Acts, ch 144, §1 HF 255  
NEW section

**48.22 Voter registration forms with driver's license and identification card forms.**

The state department of transportation shall design its forms for operators' licenses, chauffeurs' licenses, and nonoperators' identification cards so that the forms may also serve as voter registration cards. The forms shall contain spaces for the information required by section 48.6 and applicable rules of the state voter registration commission. All persons applying for operators' licenses, chauffeurs' licenses, and nonoperators' identification cards shall be asked if they desire to register to vote or change their voter registration at the same time. Each form containing a completed voter registration shall be sent to the county auditor of the county in which the voter maintains residence within one business day of completion. The state voter registration commission, in consultation with the director of the state department of transportation, shall adopt rules and forms for the implementation of this section.

89 Acts, ch 144, §2 HF 255  
NEW section

**48.23 to 48.25** Repealed by 65GA, ch 136, §401.

**48.31 Cancellation of registration.**

The registration of a qualified elector shall be canceled in any of the following instances:

1. The elector fails to vote once in the last preceding four consecutive calendar years after the elector's most recent registration or change of name, address or party affiliation, or after the elector most recently voted. For the purpose of this subsection, registration includes the submission of a registration form which makes no change in the elector's existing registration.
2. The elector registers to vote in another place.
3. The elector dies.
4. The clerk of district court sends notification of an elector's conviction of a felony, as defined in section 701.7.
5. The clerk of district court sends notification of a legal determination that the elector is severely or profoundly mentally retarded, or has been found incompetent in a proceeding held pursuant to section 229.27, or is otherwise under conservatorship or guardianship by reason of incompetency. Certification by the clerk that any such person has been found no longer incompetent by a court, or the termination by the court of any such conservatorship or guardianship shall qualify any such ward to again be an elector, subject to the other provisions of this chapter.
6. When first-class mail, which is designated "not to be forwarded", was addressed to the elector at the address shown on the registration records and is returned by the postal service.
7. Upon receipt of a written request from the qualified elector, presented in person with proper identification in the office of the county commissioner of registration.

Whenever a registration is canceled, notice of the cancellation shall be sent to the registrant at the registrant's last known address shown upon the registration records. Such notice shall be sent first-class mail and bear the words "Please Forward". However, notice is not necessary when the cancellation is due to death or if an authorization for the removal of the registration is received as provided in this chapter.

89 Acts, ch 136, §33 SF 371  
NEW subsection 7

## CHAPTER 49

### METHOD OF CONDUCTING ELECTIONS

#### 49.7 When precincting required.

Each county board of supervisors and city council shall make any changes in precinct boundaries necessary to comply with sections 49.3, 49.4 and 49.5 not earlier than July 1 nor later than November 15 of the year immediately following each year in which the federal decennial census is taken, unless the general assembly by joint resolution establishes different dates for compliance with these sections. Any or all of the publications required by section 49.11 may be made after November 15 if necessary. Each county board and city council shall notify the state commissioner and the commissioner whenever the boundaries of election precincts are changed and shall provide a map delineating the new boundary lines. Upon failure of a county board or city council to make the required changes by the dates specified by this section as determined by the state commissioner, the state commissioner shall make or cause to be made the necessary changes as soon as possible, and shall assess to the county or city, as the case may be, the expenses incurred in so doing. The state commissioner may request the services of personnel of and materials available to the legislative service bureau to assist the state commissioner in making any required changes in election precinct boundaries which become the state commissioner's responsibility.

89 Acts, ch 296, §11 SF 141  
Section amended

#### 49.8 Changes in precincts.

After any required changes in precinct boundaries have been made following each federal decennial census, at the time established by or pursuant to section 49.7, the county board or city council shall make no further changes in precinct boundaries until after the next federal decennial census, except in the following circumstances:

1. When deemed necessary by the board of supervisors of any county because of a change in the location of the boundaries, dissolution or establishment of any civil township, the boundaries of precincts actually affected may be changed as necessary to conform to the new township boundaries.
2. When territory is annexed to a city the city council may attach all or any part of the annexed territory to any established precinct or precincts which are contiguous to the annexed territory, however this subsection shall not prohibit establishment of one or more new precincts in the annexed territory.
3. A city may have one special federal census taken each decade and the population figures obtained may be used to revise precinct boundaries in accordance with the requirements of sections 49.3 and 49.5.
4. When the boundaries of a county supervisor, city council, or school director district, or any other district from which one or more members of any public representative body other than the general assembly are elected by the voters thereof, are changed by annexation, precincting or other means, the change

shall not result in the term of any officer elected from the former district being terminated before or extended beyond the expiration of the term to which the officer was last elected, except as provided under section 275.23A.

5. When a city is changing its form of government from one which has council members elected at large to one which has council members elected from wards, or is changing its number of council members elected from wards, the city council may redraw the precinct boundaries in accordance with sections 49.3 and 49.5 to coincide with the new ward boundaries.

6. Precinct boundaries established by or pursuant to section 49.4, and not changed under subsection 1 since the most recent federal decennial census, may be changed once during the period beginning January 1 of the second year following a year in which a federal decennial census is taken and ending June 30 of the year immediately following the year in which the next succeeding federal decennial census is taken, if the commissioner recommends and the board of supervisors finds that the change will effect a substantial savings in election costs. Changes made under this subsection shall be made not later than ninety-nine days before a primary election, unless the changes will not take effect until January 1 of the next even-numbered year.

89 Acts, ch 136, §34 SF 371  
Subsection 6 amended

#### **49.20 Compensation of members.**

The members of election boards shall be deemed temporary state employees who are compensated by the county in which they serve, and shall receive compensation at a rate established by the board of supervisors, which shall be not less than three dollars and fifty cents per hour, while engaged in the discharge of their duties and shall be reimbursed for actual and necessary travel expense, except that persons who have advised the commissioner prior to their appointment to the election board that they are willing to serve without pay at elections conducted for any school district or a city of three thousand five hundred or less population, shall receive no compensation for service at those elections. Compensation shall be paid to members of election boards only after the vote has been canvassed and it has been determined in the course of the canvass that the election record certificate has been properly executed by the election board.

89 Acts, ch 121, §1 HF 123  
Section amended

#### **49.23 Notice of change.**

When a change is made from the usual polling place for the precinct or when the precinct polling place for any primary or general election is different from that used for the precinct at the last preceding primary or general election, notice of such change shall be given by publication in a newspaper of general circulation in the precinct not more than twenty nor less than four days before the day on which the election is to be held. In addition a notice of the present polling place for the precinct shall be posted, not later than the hour at which the polls open on the day of the election, on each door to the usual or former polling place in the precinct and shall remain there until the polls have closed.

89 Acts, ch 136, §35 SF 371  
Section amended

#### **49.31 Arrangement of names on ballot—restrictions.**

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.

5. The name of a candidate printed on the ballot shall not include parentheses, quotation marks, or any personal or professional title.

89 Acts, ch 136, §36 SF 371  
NEW subsection 5

#### **49.37 Arrangement of ballot.**

1. Each column or row containing a ticket or tickets, each preceded by the name of a political party or a group of petitioners, shall be separated by a distinct line appearing on the ballot. The names of candidates for nonpartisan offices shall be placed on a separate column or row on the ballot.

2. The commissioner shall arrange the ballot in conformity with the certificate issued by the state commissioner under section 43.73, in that the names of the respective candidates on each political party ticket shall appear in the order they appeared on the certificate, above or to the left of the nonparty political organization tickets.

3. The commissioner shall arrange the partisan county offices on the ballot with the board of supervisors first, followed by the other county offices and township offices in the same sequence in which they appear in sections 39.17 and 39.22. Nonpartisan offices shall be listed below or to the right of partisan offices.

89 Acts, ch 136, §37 SF 371  
NEW subsection 3

#### **49.44 Summary.**

When a proposed constitutional amendment or other public measure to be decided by the voters of the entire state is to be voted upon, the state commissioner

shall prepare a written summary of the amendment or measure including the number of the amendment or statewide public measure assigned by the state commissioner. The summary shall be printed immediately preceding the text of the proposed amendment or measure on the paper ballot referred to in section 49.43 and, in precincts where the amendment or measure will be voted on by machine, shall be placed in the voting machine inserts as required by section 52.25.

The commissioner may prepare a summary for public measures if the commissioner finds that a summary is needed to clarify the question to the voters.

89 Acts, ch 136, §38 SF 371  
NEW unnumbered paragraph 2

#### **49.48 Notice for judicial officers and constitutional amendments.**

The state commissioner of elections shall prescribe a notice to inform voters of the location on the ballot of the form for retaining or removing judicial officers and for ratifying or defeating proposed constitutional amendments. The notice shall be conspicuously attached to the voting machine or to the ballot.

89 Acts, ch 136, §39 SF 371  
Section amended

#### **49.53 Publication of ballot and notice.**

The commissioner shall not less than four nor more than twenty days before 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 include the full text of all public measures to be voted upon at the election.

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.

89 Acts, ch 136, §40 SF 371  
Section amended

#### **49.58 Effect of death of certain candidates.**

If any candidate nominated by a political party, as defined in section 43.2, for the office of senator or representative in the congress of the United States, governor, lieutenant governor, attorney general, or senator or representative in the general assembly dies during the period beginning on the eighty-eighth day and ending on the last day before the general election, or if any candidate so nominated for the office of county supervisor dies during the period beginning on the seventy-third day and ending on the last day before the general election, the vote cast at the general election for that office shall not be canvassed as would

otherwise be required by chapter 50. Instead, a special election shall be held on the first Tuesday after the second Monday in December, for the purpose of electing a person to fill that office.

Each candidate for that office whose name appeared on the general election ballot shall also be a candidate for the office in the special election, except that the deceased candidate's political party may designate another candidate in substantially the manner provided by section 43.78 for filling vacancies on the general election ballot. However, a political party which did not have a candidate on the general election ballot for the office in question may similarly designate a candidate for that office in the special election. The name of any replacement or additional candidate so designated shall be submitted in writing to the state commissioner, or the commissioner in the case of a candidate for county supervisor, not later than five o'clock p.m. on the first Tuesday after the date of the general election. No other candidate whose name did not appear on the general election ballot as a candidate for the office in question shall be placed on the ballot for the special election, in any manner. The special election shall be held and canvassed in the manner prescribed by law for the general election.

89 Acts, ch 136, §41 SF 371  
Section amended

#### **49.75 Oath.**

Before opening the polls, each of the board members shall take the following oath: "I, A. B., do solemnly swear or affirm that I will impartially, and to the best of my knowledge and ability, perform the duties of precinct election official of this election, and will studiously endeavor to prevent fraud, deceit, and abuse in conducting the election."

89 Acts, ch 136, §42 SF 371  
Section amended

#### **49.107 Prohibited acts on election day.**

The following acts, except as specially authorized by law, are prohibited on any election day:

1. Loitering, congregating, electioneering, posting of signs, treating voters, or soliciting votes, during the receiving of the ballots, either on the premises of any polling place or within three hundred feet of any outside door of any building affording access to any room where the polls are held, or of any outside door of any building affording access to any hallway, corridor, stairway, or other means of reaching the room where the polls are held, except this subsection shall not apply to the posting of signs on private property not a polling place.
2. Interrupting, hindering, or opposing any voter while in or approaching the polling place for the purpose of voting.
3. A voter allowing any person to see how the voter's ballot is marked.
4. A false statement by a voter as to the voter's ability to mark a ballot.
5. Interfering or attempting to interfere with a voter when inside the enclosed space, or when marking a ballot.
6. Endeavoring to induce a voter to show how the voter marks, or has marked a ballot.
7. Marking, or causing in any manner to be marked, on any ballot, any character for the purpose of identifying such ballot.
8. Serving as a member of a challenging committee under section 49.104, subsection 2, for the general election or the primary election by a precinct election official, a member of a city council, a mayor, a member of the county board of supervisors, a county attorney, treasurer, sheriff, auditor, or recorder, or a state

senator or representative during the person's term of office or while being a candidate for any of those offices.

89 Acts, ch 136, §43 SF 371  
Subsection 8 amended

## CHAPTER 50

### CANVASS OF VOTES

#### **50.12 Return and preservation of ballots.**

Immediately after making the 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 the 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. Ballots from elections for federal offices shall be preserved for twenty-two months.

89 Acts, ch 136, §44 SF 371  
Section amended

#### **50.13 Destruction of ballots.**

If, at the expiration of the length of time specified in section 50.12, a contest is not pending, the commissioner, without opening the package in which they have been enclosed, shall destroy the ballots, in the presence of two electors, one from each of the two leading political parties, who shall be designated by the chairperson of the board of supervisors.

89 Acts, ch 136, §45 SF 371  
Section amended

**50.14 Destruction of primary election ballots.** Repealed by 89 Acts, ch 136, §75. See §50.12, 50.19. SF 371

#### **50.19 Preservation and destruction of books.**

The commissioner may destroy precinct election registers, the declarations of eligibility signed by voters, and other material pertaining to any election in which federal offices are not on the ballot, except the tally lists, six months after the election if a contest is not pending. If a contest is pending all election materials shall be preserved until final determination of the contest. Before destroying the election registers and declarations of eligibility, the commissioner shall prepare records as necessary to permit compliance with section 48.31, subsection 1. Nomination papers for primary election candidates for state and county offices shall be destroyed ten days before the general election, if a contest is not pending.

Material pertaining to elections for federal offices, including ballots, precinct election registers, declarations of eligibility signed by voters, documents relating to absentee ballots, and challenges of voters, shall be preserved for twenty-two months after the election. If a contest is not pending the materials may be destroyed at the end of the retention period.

89 Acts, ch 136, §46 SF 371  
Section amended

### **50.22 Special precinct board to determine challenges and canvass absentee ballots.**

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 the challenged voter's registration was canceled in the same county where the person attempted to vote because first class mail other than the registration receipt mailed pursuant to section 48.3 was returned by the postal service during the four years preceding the election in progress, the person's ballot shall be accepted for counting and the elector's registration shall be reinstated.

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.

The special precinct board shall also canvass any absentee ballots which were received after the polls closed in accordance with section 53.17. If necessary, they shall reconvene again on the day of the canvass by the board of supervisors to canvass any absentee ballots which were timely received. The special precinct board shall submit their tally list to the supervisors before the conclusion of the canvass by the board.

89 Acts, ch 136, §47, 48 SF 371  
Unnumbered paragraph 2 amended  
NEW unnumbered paragraph 4

### **50.24 Canvass by board of supervisors.**

The county board of supervisors shall meet to canvass the vote at nine o'clock on the morning of the first Monday after the day of each election to which this chapter is applicable, unless the law authorizing the election specifies another date for the canvass. If that Monday is a public holiday, section 4.1, subsection 22 controls. Upon convening, the board shall open and canvass the tally lists and shall prepare abstracts stating, in words written at length, the number of votes cast in the county, or in that portion of the county in which the election was held, for each office and on each question on the ballot for the election. The board shall contact the chairperson of the special precinct board before adjourning and include in the canvass any absentee ballots which were received after the polls closed in accordance with section 53.17 and which were canvassed by the special precinct board after election day. The abstract shall further indicate the name of each person who received votes for each office on the ballot, and the number of votes each person named received for that office, and the number of votes for and against each question submitted to the voters at the election.

Any obvious clerical errors in the tally lists from the precincts shall be corrected by the supervisors. Complete records of any changes shall be recorded in the minutes of the canvass.

89 Acts, ch 136, §49 SF 371  
Section amended

## CHAPTER 52

### ALTERNATIVE VOTING SYSTEMS

#### **52.5 Testing and examination of voting equipment.**

A person or corporation owning or being interested in a voting machine or electronic voting system may request that the state commissioner call upon the board of examiners to examine and test the machine or system. Within seven days of receiving a request for examination and test, the state commissioner shall notify the board of examiners of the request in writing and set a time and place for the examination and test.

The state commissioner shall formulate, with the advice and assistance of the examiners, and adopt rules governing the testing and examination of any voting machine or electronic voting system by the board of examiners. The rules shall prescribe the method to be used in determining whether the machine or system is suitable for use within the state and performance standards for voting equipment in use within the state. The rules shall include standards for determining when recertification is necessary following modifications to the equipment or to the programs used in tabulating votes, and a procedure for rescinding certification if a system or machine is found not to comply with performance standards adopted by the state commissioner.

The state commissioner may employ a competent person or persons to assist the examiners in their evaluation of the equipment and to advise the examiners as to the sufficiency of the equipment. Consultant fees shall be paid by the person who requested the certification. Following the examination and testing of the voting machine or system the examiners shall report to the state commissioner describing the testing and examination of the machine or system and upon the capacity of the machine or system to register the will of voters, its accuracy and efficiency, and with respect to its mechanical perfections and imperfections. Their report shall be filed in the office of the state commissioner and shall state whether in their opinion the kind of machine or system so examined can be safely used by voters at elections under the conditions prescribed in this chapter. If the report states that the machine or system can be so used, it shall be deemed approved by the examiners, and machines or systems of its kind may be adopted for use at elections as provided in this section. Any form of voting machine or system not so approved cannot be used at any election. Before actual use by a county of a particular electronic voting system which has been approved for use in this state, the state commissioner shall formulate, with the advice and assistance of the examiners, and adopt rules governing the development of vote counting programs and all procedures used in actual counting of votes by means of that system.

89 Acts, ch 136, §50 SF 371  
Section amended

#### **52.32 Procedure upon closing polls.**

The provisions of this section apply, in lieu of sections 50.1 to 50.12, to any precinct for those elections at which voting is conducted by means of an electronic voting system and the ballots are to be counted at a counting center.

1. At the time for closing of the polls, or as soon thereafter as all persons entitled under section 49.74 to do so have cast their votes, the precinct election officials in each precinct where voting punch devices are in use shall secure the devices against further voting. They shall then open the ballot box and count the number of ballots or envelopes containing ballots that have been cast to determine whether the number of ballots cast exceeds the number of declarations of eligibility signed as required by section 49.77. If so, that fact shall be reported in writing to the commissioner together with the number of excess ballots and the reason for the excess, if known.

2. If ballot cards are used and write-in votes are cast on a separate envelope or write-in ballot, the precinct election officials shall next count the write-in votes cast in the precinct, if any. If special paper ballots or ballot cards are used and write-in votes are recorded directly upon the ballot, this subsection is optional, at the discretion of the commissioner. If write-in votes are not canvassed by the precinct election officials at the precinct where they were cast, they shall be tabulated at the counting center. All ballots or envelopes on which write-in votes have been recorded shall be serially numbered, starting with the number one, and the same number shall be placed on the regular ballot card of that voter. The precinct election official shall compare the write-in votes with the votes cast on the ballot card. If the total number of votes for any office exceeds the number allowed by law, a notation to that effect shall be entered on the back of the ballot card and the votes for the office involved shall not be counted.

3. The precinct election officials shall place all ballots that have been cast in a container provided by the commissioner for the purpose, which shall be sealed in the presence of all of the precinct election officials. They shall then each affix their signatures to a statement attesting that the requirements of this section have been complied with, and the statement shall be returned to the commissioner with the election register as required by section 50.17.

89 Acts, ch 136, §51 SF 371  
 Subsection 2 amended

## CHAPTER 53

### ABSENT VOTERS LAW

#### **53.18 Manner of preserving ballot and application.**

Upon receipt of the absentee ballot, the commissioner shall at once record the number appearing on the application and return carrier envelope and time of receipt of such ballot and enclose the same, unopened, together with the application made by the qualified elector, in a large carrier envelope on which shall appear the words "This envelope contains an absent voter's ballot for the election", and securely seal the same.

89 Acts, ch 136, §52 SF 371  
 Section amended

#### **53.21 Replacement of lost absentee ballots.**

A voter who has requested an absentee ballot may obtain a replacement ballot if the voter declares that the original ballot was lost or did not arrive. The commissioner upon receipt of a written or oral request for a replacement ballot shall provide a duplicate ballot. The same serial number that was assigned to the records of the original absentee ballot request shall be used on the envelopes and records of the replacement ballot.

The commissioner shall include with the replacement ballot two copies of a statement in substantially the following form:

The absentee ballot which I requested on ..... (date) has been lost or was never received. If I find this absentee ballot I will return it, unvoted, to the commissioner.

.....  
 (Signature of voter)  
 .....  
 (Date)

The voter shall enclose one copy of the above statement in the return carrier envelope with the ballot envelope and retain a copy for the voter's records.

89 Acts, ch 136, §53 SF 371  
NEW section

### **53.39 Request for ballot—when available.**

Section 53.2 does not apply in connection with the primary and general elections in the case of a qualified elector of the state of Iowa serving in the armed forces of the United States. In any such case an application for ballot as provided for in that section is not required and an absent voter's ballot shall be sent or made available to any such elector upon a request as provided in this division. All official ballots to be voted by qualified absent voters in the armed forces of the United States at the primary election and the general election shall be printed prior to forty days before the respective elections and shall be available for transmittal to such qualified electors in the armed forces of the United States at least forty days before the respective elections. The provisions of this chapter apply to absent voting by qualified voters in the armed forces of the United States at primary and general elections except as modified by the provisions of this division.

89 Acts, ch 136, §54 SF 371  
Section amended

### **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 the ballot is offered for voting, the envelope shall not be opened, but the envelope and ballot contained in the envelope shall be preserved and returned by the precinct election officials to the commissioner, who shall preserve them for the period of time and under the conditions provided for in sections 50.12 through 50.15 and section 50.19.

89 Acts, ch 136, §55 SF 371  
Unnumbered paragraph 4 amended

#### **53.41 Records by commissioner—excess requests or ballots.**

The commissioner of each county shall establish and maintain a record of all requests for ballots which are made, and of all ballots transmitted, and the manner of transmittal, from and received in the commissioner's office under the provisions of this division. If more than one request for absent voter's ballot for a particular election is made to the commissioner by or on behalf of a voter in the armed forces of the United States, the request first received shall be honored, except that if one of the requests is made by the voter, and a request on the voter's behalf has not been previously honored, the request of the voter shall be honored in preference to a request made on the voter's behalf by another. Not more than one ballot shall be transmitted by the commissioner to any voter for a particular election. If the commissioner receives more than one absent voter's ballot, provided for by this division, from or purporting to be from any one voter for a particular election, all of the ballots so received from or purporting to be from such voter are void, and the commissioner shall not deliver any of the ballots to the precinct election officials, but shall retain them in the commissioner's office, and preserve them for the period and under the conditions provided for in sections 50.12 through 50.15 and section 50.19.

89 Acts, ch 136, §56 SF 371  
Section amended

#### **53.44 Affidavit to be signed and returned.**

The affidavit on the envelope used in connection with voting by absentee ballot under this division by members of the armed forces of the United States need not be notarized or witnessed, but the affidavit on the ballot envelope shall be completed and signed by the voter.

Absentee ballots issued under this division shall be returned in the same manner and within the same time limits specified in section 53.17.

89 Acts, ch 136, §57 SF 371  
NEW unnumbered paragraph 2

## **CHAPTER 54**

### **PRESIDENTIAL ELECTORS**

#### **54.5 Presidential nominees.**

The names of the candidates for president and vice president of a political party as defined in the law relating to primary elections, shall, by five o'clock p.m. on the eighty-first day before the election, be certified to the state commissioner by the chairperson and secretary of the state central committee of the party.

However, if the national nominating convention of a political party adjourns later than eighty-nine days before the general election the certificate showing the names of that party's candidates for president and vice president shall be filed within five days after adjournment.

As an alternative to the certificate by the state central committee, the certificate of nomination issued by the political party's national nominating convention may be used to certify the names of the party's candidates for

president and vice president. If certificates of nomination are received from both the state central committee and the national nominating convention of a political party, and there are differences between the two certificates, the certificate filed by the state central committee shall prevail.

The state central committee shall also file a list of the names and addresses of the party's presidential electors, one from each congressional district and two from the state at large, not later than five o'clock p.m. on the eighty-first day before the general election.

89 Acts, ch 136, §58 SF 371  
Section amended

## CHAPTER 56

### CAMPAIGN FINANCE DISCLOSURE

#### 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 require-

ments 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 also file disclosure reports on the twentieth day of January and October of each year in which the candidate or ballot issue does not appear on the ballot and on the twentieth day of January, May, and July of each year in which the candidate or ballot issue appears on the ballot, until the committee dissolves. These reports shall be current to five days prior to the filing deadline and are considered timely filed if mailed bearing a United States postal service postmark 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.

89 Acts, ch 107, §1 SF 365  
Subsection 1, paragraph e amended

## CHAPTER 64

### OFFICIAL AND PRIVATE BONDS

#### **64.6 State officers—blanket bonds.**

State officials are not required to obtain bonds, but may be covered under a blanket bond for state employees. The blanket bond purchases shall be made in an amount and with the level of assumption of risk by the state that is determined by the department of general services. The state shall pay the reasonable cost of bonds under this section.

89 Acts, ch 76, §5 HF 256  
Section amended

#### **64.11 Expense of bonds paid by county.**

If a county treasurer, county attorney, recorder, auditor, sheriff, medical examiner, member of the veterans affairs commission, member of the board of supervisors, engineer, steward, or matron elects to furnish a bond with an association or incorporation as surety as provided in this chapter, the reasonable cost of the bond shall be paid by the county where the bond is filed.

89 Acts, ch 83, §16 SF 112  
Section amended

#### **64.15 Bonds of deputy officers and clerks.**

Bonds required by law of deputy state, county, and city officers shall, unless otherwise provided, be in such amounts as may be fixed by the governor, board of supervisors, or the council, as the case may be, with sureties as required for the bonds of the principal, and filed with the same officer. Any loss of moneys caused by a deputy shall be paid by the deputy or the surety on the deputy's bond and the deputy's principal is not liable for the loss. The reasonable cost of the bonds

required of deputy county officers, clerks, and cashiers employed by county officers shall be paid by the county where the bond is filed.

The exemptions provided in section 561.16 and chapter 627 are applicable to any claim made against a deputy state, county, or city officer and each bond shall so provide.

89 Acts, ch 153, §1 HF 668  
Section amended

#### **64.15A Exemptions applicable.**

The exemptions provided in section 561.16 and chapter 627 are applicable to any claim made against a state, county, or city officer and each bond shall so provide.

89 Acts, ch 153, §2 HF 668  
NEW section

## CHAPTER 68B

### CONFLICTS OF INTEREST OF PUBLIC OFFICERS AND EMPLOYEES

#### **68B.7 Ban for two-year period after service.**

No person who has served as an official or employee of a state agency shall within a period of two years after the termination of such service or employment appear before such state agency or receive compensation for any services rendered on behalf of any person, firm, corporation, or association in relation to any case, proceeding, or application with respect to which such person was directly concerned and personally participated during the period of service or employment.

A person who has served as the head of or on a commission or board of a regulatory agency or as a deputy thereof, shall not, within a period of two years after the termination of such service accept employment with that commission, board, or agency or receive compensation for any services rendered on behalf of any person, firm, corporation, or association in any case, proceedings, or application before the department with which the person so served wherein the person's compensation is to be dependent or contingent upon any action by such agency with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit, or in promoting or opposing, directly or indirectly, the passage of bills or resolutions before either house of the general assembly.

89 Acts, ch 321, §24 HF 779  
Unnumbered paragraph 2 amended

## 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, unless an election is called as provided in section 69.14A.

4. *Board of supervisors.* In the membership of the board of supervisors, by the treasurer, auditor, and recorder, or as provided in section 69.14A. If 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.

89 Acts, ch 215, §2, 3 HF 522  
Subsections 3 and 4 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 in which the vacancy exists.

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) Seventy-four 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 final filing date for candidates filing with the state commissioner or commissioner, as the case may be, for 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.

89 Acts, ch 136, §59-61 SF 371

Unnumbered paragraph 1 amended

Subsection 1, paragraph a, subparagraph (1) amended

Subsection 1, paragraph b, subparagraph (1) amended

### 69.13 Vacancies in certain offices.

1. *Senator in Congress and elective state officers.* If a vacancy occurs in the office of senator in the Congress of the United States, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture or attorney general seventy-five or more days prior to a general election, and the unexpired term in which the vacancy exists has more than seventy days to run after the date of that general election, the vacancy shall be filled for the balance of the unexpired term at that general election and the person elected to fill the vacancy shall assume office as soon as a certificate of election has been issued and the person has qualified.

2. *County officers.* If a vacancy occurs in the office of county supervisor or in any of the offices listed in section 39.17 sixty or more days prior to a general election, and the unexpired term in which the vacancy exists has more than seventy days to run after the date of that general election, the vacancy shall be filled for the balance of the unexpired term at that general election and the person elected to fill the vacancy shall assume office as soon as a certificate of election has been issued and the person has qualified.

If the unexpired term of office in which the vacancy occurs will expire within seventy days after the date of the next pending election, section 69.11 applies.

89 Acts, ch 136, §62 SF 371

Subsection 2, NEW unnumbered paragraph 2

### 69.14A Filling vacancy of elected county officer.

1. When a vacancy exists on the board of supervisors, the committee of county officers designated to fill the vacancy shall publish notice as provided in section 331.305 indicating the method, appointment or special election, by which the committee intends to fill the vacancy. If appointment is selected by the committee, the appointment may be made before publication of the notice, but the appointment shall be made within forty days after the vacancy occurs. However, if within fourteen days after the date of the notice or within fourteen days after the appointment is made, whichever date is later, a petition requesting a special election to fill the vacancy is filed with the county auditor, the appointment is temporary and a special election shall be called as provided in subsection 3. The petition shall meet the requirements of section 331.306.

2. When a vacancy exists in an elected county office, the board of supervisors shall publish notice as provided in section 331.305 indicating the method, appointment or special election, by which the board intends to fill the vacancy. If appointment is selected by the board, the appointment may be made before publication of the notice, but the appointment shall be made within forty days after the vacancy occurs. However, if within fourteen days after the date of the notice or within fourteen days after the appointment is made, whichever date is

later, a petition requesting a special election to fill the vacancy is filed with the county auditor, the appointment is temporary and a special election shall be called as provided in subsection 3. The petition shall meet the requirements of section 331.306.

3. The committee of county officers or board of supervisors as applicable may, on its own motion, or shall, upon receipt of a petition as provided in this section, call for a special election to fill the vacancy in lieu of appointment if section 69.13, subsection 2, does not apply. The committee or board shall order the special election at the earliest practicable date, but giving at least thirty days' notice of the election. A special election called under this section shall be held on a Tuesday and shall not be held on the same day as a school election within the county.

89 Acts, ch 215, §4 HF 522  
NEW section

## CHAPTER 74

### PUBLIC OBLIGATIONS NOT PAID FOR WANT OF FUNDS

#### 74.9 Payment in case of default by school.

In the event a school corporation which has issued anticipatory warrants fails to pay principal or interest of its anticipatory warrants when due, upon certification by the trustee or the paying agent designated pursuant to section 76.10 to the director of the department of revenue and finance, the director of the department of revenue and finance shall withhold and directly apply, from any state appropriation to which the school corporation is entitled, so much as is certified to the trustee or the paying agent to the payment of the principal and interest on the anticipatory warrants of the school corporation then due. The obligation of the director of revenue and finance to withhold and directly apply moneys from any state appropriation to which the school corporation is entitled does not create any moral or legal obligations of the state to pay, when due, the principal and interest on the anticipatory warrants of a school corporation. All appropriations for school corporations shall be subject to the provisions of this section.

89 Acts, ch 319, §37 HF 774  
NEW section

## CHAPTER 77

### NOTARIES PUBLIC

Repealed by 89 Acts, ch 50, §14. See ch 77A.

## CHAPTER 77A

### NOTARIAL ACTS

#### 77A.1 Title.

This chapter shall be known as the "*Iowa Law on Notarial Acts*".

89 Acts, ch 50, §1 HF 693  
NEW section

#### 77A.2 Definitions.

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

1. *"Acknowledgment"* means a declaration by a person that the person has executed an instrument for the purposes stated in the document and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified in the document.

2. *"Notarial act"* means any act that a notary public of this state is authorized to perform, and includes, but is not limited to, taking an acknowledgment, administering an oath or affirmation, taking verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

3. *"Notarial officer"* means a notary public or other officer authorized to perform notarial acts.

4. *"Representative capacity"* means any of the following:

a. A representative on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative.

b. A public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument.

c. An attorney in fact for a principal.

d. Any other capacity as an authorized representative of another.

5. *"Verification upon oath or affirmation"* means a declaration that a statement is true, made by a person upon oath or affirmation.

89 Acts, ch 50, §2 HF 693  
NEW section

### **77A.3 Appointment—revocation.**

1. The secretary of state may appoint residents of this state as notaries public and may revoke an appointment for cause.

2. The secretary of state shall appoint members of the general assembly as notaries public, upon request, and may revoke an appointment for cause.

3. The secretary of state may appoint as a notary public a resident of a state bordering Iowa if that person's place of work or business is within the state of Iowa. If a notary who is a resident of a state bordering Iowa ceases to work or maintain a place of business in Iowa, the notary commission expires.

89 Acts, ch 50, §3 HF 693  
Authority, until June 30, 1990, to extend commissions and staggered expiration dates; 89 Acts, ch 50, §15  
NEW section

### **77A.4 Term of commission.**

The term of a notary public who is an Iowa resident is three years. The term of a notary who is a resident of a state bordering Iowa and whose place of work or business is in Iowa, is one year. The term of a notary who is a member of the general assembly is the member's term of office.

89 Acts, ch 50, §4 HF 693  
NEW section

### **77A.5 Notice of expiration of term.**

The secretary of state shall, two months preceding the expiration of a commission, notify the notary public of the expiration date and furnish a blank application for reappointment.

89 Acts, ch 50, §5 HF 693  
NEW section

### **77A.6 Application—fee—seal.**

1. Before a commission is delivered to a person appointed as a notary public, the person shall:

a. Complete an application for appointment as a notary public on a form prescribed by the secretary of state.

b. Remit the sum of thirty dollars to the secretary of state. However, persons appointed as notaries public under section 77A.3, subsection 2, are not subject to the fee imposed by this subsection.

2. When the secretary of state determines that the requirements of this section are satisfied, the secretary shall execute and deliver a certificate of commission to the person appointed.

3. A notary public may procure a seal or stamp for use in performing notarial acts. A seal or stamp used by a notary public in the performance of notarial acts shall contain the words "Notarial Seal" and the word "Iowa". The stamp may include the name of the notary public. However, a notarial act is not invalid if a seal or stamp used in the performance of a notarial act fails to meet the requirements of this subsection. This subsection does not require the use of a seal or stamp in the performance of a notarial act.

89 Acts, ch 50, §6 HF 693  
NEW section

#### **77A.7 Revocation—notice and hearing—rules.**

If the commission of a person appointed notary public is revoked by the secretary of state, the secretary shall immediately notify the person through the mail. The notice shall state the cause of the revocation and shall inform the person of the right to a hearing on the revocation. The secretary of state shall adopt rules under chapter 17A to provide for a hearing for persons whose commission is revoked.

89 Acts, ch 50, §7 HF 693  
NEW section

#### **77A.8 Discretion—limitation.**

A notary public may exercise reasonable discretion in performing or declining to perform notarial services, but a notary shall not condition the performance of notarial services upon the requirement that the person served be a customer or client of the establishment by which the notary is employed.

The employer of a notary public shall not condition the performing of notarial services upon the requirement that the person served be a customer or client of the establishment by which the notary is employed.

89 Acts, ch 50, §8 HF 693  
NEW section

#### **77A.9 Notarial acts.**

1. In taking an acknowledgment, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the notary and making the acknowledgment is the person whose true signature is on the instrument.

2. In taking a verification upon oath or affirmation, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.

3. In witnessing or attesting a signature, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named on the instrument.

4. In certifying or attesting a copy of a document or other item, the notarial officer must determine that the copy is a full, true, and accurate transcription or reproduction of that which was copied.

5. In making or noting a protest of a negotiable instrument, the notarial officer must determine the matters set forth in section 554.3509.

6. A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document in any of the following circumstances:

a. The person is personally known to the notarial officer.

b. The person is identified upon the oath or affirmation of a credible witness personally known to the notarial officer.

c. The person is identified on the basis of identification documents.

89 Acts, ch 50, §9 HF 693  
NEW section

#### **77A.10 Notarial acts in this state.**

1. A notarial act may be performed within this state by the following persons:

a. A notary public appointed by the secretary of state pursuant to section 77A.3.

b. A judge, clerk, or deputy clerk of a court of this state.

c. A person authorized by the law of this state to administer oaths.

d. Any other person authorized to perform the specific act by the law of this state.

2. Notarial acts performed within this state under federal authority have the same effect as if performed by a notarial officer of this state.

3. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

89 Acts, ch 50, §10 HF 693  
NEW section

#### **77A.11 Fees—certification.**

The secretary of state shall collect the following fees, for use in offsetting the cost of administering this chapter:

1. For furnishing a certified copy of any document, instrument, or paper relating to a notary public, one dollar per page and five dollars for the certificate.

2. For furnishing an uncertified copy of any document, instrument, or paper relating to a notary public, one dollar per page.

3. For certifying, under seal of the secretary of state, a statement as to the status of a notary commission which would not appear from a certified copy of documents on file in the secretary of state's office, five dollars.

89 Acts, ch 50, §11 HF 693  
NEW section

#### **77A.12 Powers of the secretary of state.**

The secretary of state has the power and authority reasonably necessary to administer this chapter efficiently and to perform the duties imposed upon the secretary of state. This power and authority includes rulemaking authority to provide for reciprocity in recognizing notarial acts performed under any other jurisdiction.

89 Acts, ch 50, §12 HF 693  
NEW section

## CHAPTER 78

### ADMINISTRATION OF OATHS

#### **78.1 General authority.**

The following officers are empowered to administer oaths and to take affirmations:

1. Justices of the supreme court and judges of the court of appeals and district courts, including district associate judges and judicial magistrates.

2. Official court reporters of district courts in taking depositions under appointment or by agreement of counsel.

3. Clerks and deputy clerks of the supreme and district courts.

4. Notaries public.
5. Certified shorthand reporters.

89 Acts, ch 296, §12 SF 141  
Subsection 1 amended

### **78.2 Limited authority.**

The following officers and persons are empowered to administer oaths and to take affirmations in any matter pertaining to the business of their respective office, position, or appointment:

1. Governor, secretary of state, secretary of agriculture, auditor of state, treasurer of state, attorney general.
2. Members of all boards, commissions, or bodies created by law.
3. All county officers other than those named in section 78.1.
4. Mayors and clerks of cities, precinct election officials, township clerks, assessors, and surveyors.
5. All duly appointed referees or appraisers.
6. All investigators for supplemental assistance as provided for under chapter 249.
7. The director and employees of the department of revenue and finance, as authorized by the director, and as set forth in chapters 421 and 422.

89 Acts, ch 296, §13 SF 141  
Subsection 7 amended

## **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.

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.

89 Acts, ch 303, §17 SF 532

Unnumbered paragraph 9 stricken and unnumbered paragraph 10 (last paragraph) amended

**79.28 Prohibitions relating to certain actions by state employees—penalty—civil remedies.**

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 any information to a member or employee of the general assembly or from disclosing information to any other public official or law enforcement agency if the employee reasonably believes the information 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 any information by that employee to a member or employee of the general assembly, or a disclosure of information to any other public official or law enforcement agency if the employee reasonably believes the information 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. Subsection 2 may be enforced through a civil action.

a. A person who violates subsection 2 is liable to an aggrieved employee for affirmative relief including reinstatement, with or without back pay, or any other equitable relief the court deems appropriate, including attorney fees and costs.

b. When a person commits, is committing, or proposes to commit an act in violation of subsection 2, 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 the attorney general.

6. 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.

7. The director of the department of personnel shall provide procedures for notifying new state employees of the provisions of this section and shall periodically conduct promotional campaigns to provide similar information to all state employees. The information shall include the toll-free telephone number of the citizens' aide.

89 Acts, ch 124, §2 HF 542

Section amended

**79.29 Reprisals prohibited—political subdivisions—penalty—civil remedies.**

1. 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 employment by a political subdivision of this state as a reprisal for a disclosure of any information

by that employee to a member or employee of the general assembly, or an official of that political subdivision or a state official or for a disclosure of information to any other public official or law enforcement agency if the employee reasonably believes the information 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 section does not apply if the disclosure of the information is prohibited by statute.

2. A person who violates subsection 1 commits a simple misdemeanor.

3. Subsection 1 may be enforced through a civil action.

a. A person who violates subsection 1 is liable to an aggrieved employee for affirmative relief including reinstatement, with or without back pay, or any other equitable relief the court deems appropriate, including attorney fees and costs.

b. When a person commits, is committing, or proposes to commit an act in violation of subsection 1, 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 the county attorney.

89 Acts, ch 124, §3 HF 542  
Section amended

## CHAPTER 80

### DEPARTMENT OF PUBLIC SAFETY

Notification and report regarding award or loss of federal funds; 89 Acts, ch 317, §46

#### **80.18 Expenses and supplies—reimbursement.**

It shall be the duty of the commissioner of public safety to provide for the members of the department when on duty, suitable uniforms, subsistence, arms, equipment, quarters, and other necessary supplies, and also the expense and means of travel and boarding the members of the department, according to rules made by the commissioner, as may be provided by appropriation.

The department 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 during the employee's tour of duty. However, the reimbursement shall not exceed one hundred fifty dollars for each item. The department shall establish rules in accordance with chapter 17A to carry out the purpose of this paragraph.

89 Acts, ch 317, §23 SF 531  
Unnumbered paragraph 2 amended

#### **80.25A Pari-mutuel and excursion boat gambling investigation and enforcement.**

The commissioner of public safety shall direct the chief of the division of criminal investigation and bureau of identification to establish a subdivision to be the primary criminal investigative and enforcement agency for the purpose of enforcement of chapters 99D and 99F. The commissioner of public safety shall appoint or assign other agents to the division as necessary to enforce chapters 99D and 99F. All enforcement officers, assistants, and agents of the division are subject to section 80.15 except clerical workers.

89 Acts, ch 67, §19 SF 124  
Section amended

#### **80.29 Agents transferred from pharmacy board—conditions—retirement.** Repealed by 89 Acts, ch 83, §87. SF 112

89 Acts, ch 83, §87 SF 112  
Section repealed

**80.30 Individual qualifications.**

If an individual is not able to meet the qualifications established by section 80.15 or chapter 97A and that individual otherwise possesses experience and training which qualifies that individual as a person capable of enforcing laws relating to controlled or counterfeit substances, that individual may be hired by the commissioner of public safety.

89 Acts, ch 83, §18 SF 112  
Section amended

**80.31 Voluntary submission to conditions.** Repealed by 89 Acts, ch 83, §87. SF 112

89 Acts, ch 83, §87 SF 112  
Section repealed

**CHAPTER 80A****PRIVATE INVESTIGATIVE AGENCIES AND  
PRIVATE SECURITY AGENCIES****80A.7 Identification cards.**

The department shall issue to each licensee and to each employee of the licensee an identification card in a form approved by the commissioner. The application for a permanent identification card shall include a temporary identification card valid for fourteen days from the date of receipt of the application by the applicant. It is unlawful for an agency licensed under this chapter to employ a person to act in the private investigation business or private security business unless the person has in the person's immediate possession an identification card issued under this section.

The licensee is responsible for the use of identification cards by the licensee's employees and shall return an employee's card to the department upon termination of the employee's service. Identification cards remain the property of the department. The fee for each card is ten dollars.

A county sheriff may issue temporary identification cards valid for fourteen days to a person employed by an agency licensed as a private security business or private investigation business on a temporary basis in the county. The fee for each card is five dollars. The form of the temporary identification cards shall be approved by the commissioner.

89 Acts, ch 112, §1 SF 416  
Section amended

**CHAPTER 80B****IOWA LAW ENFORCEMENT ACADEMY****80B.11 Rules.**

The director of the academy, subject to the approval of the council, shall promulgate rules in accordance with the provisions of this chapter and chapter 17A, giving due consideration to varying factors and special requirements of law enforcement agencies relative to the following:

1. Minimum entrance requirements, course of study, attendance requirements, and equipment and facilities required at approved law enforcement training schools. Minimum age requirements for entrance to approved law enforcement training schools shall be eighteen years of age.

2. Minimum basic training requirements law enforcement officers employed after July 1, 1968, must complete in order to remain eligible for continued employment and the time within which such basic training must be completed.

3. Categories or classifications of advanced in-service training program and minimum courses of study and attendance requirements for such categories or classifications.

4. Minimum standards of physical, educational and moral fitness which shall govern the recruitment, selection and appointment of law enforcement officers.

5. Minimum standards of mental fitness which shall govern the initial recruitment, selection and appointment of law enforcement officers. The rules shall include, but are not limited to, providing a battery of psychological tests to determine cognitive skills, personality characteristics and suitability of an applicant for a law enforcement career. However, this battery of tests need only be given to applicants being considered in the final selection process for a law enforcement position. Notwithstanding any provision of chapter 400, an applicant shall not be hired if the employer determines from the tests that the applicant does not possess sufficient cognitive skills, personality characteristics, or suitability for a law enforcement career. The director of the academy shall, beginning July 1, 1986, provide for the cognitive and psychological examinations and their administration at no cost to the law enforcement agencies or applicants, and shall identify and procure persons who can be hired to interpret the examinations.

6. Grounds for revocation of a law enforcement officer's certification.

7. Exemptions from particular provisions of this chapter in case of any state, county or city, if, in the opinion of the council, the standards of law enforcement training established and maintained by the governmental agency are as high or higher than those established pursuant to this chapter; or revocation in whole or in part of such exemption, if in its opinion the standards of law enforcement training established and maintained by the governmental agency are lower than those established pursuant to this chapter.

8. Minimum qualifications for instructors in law enforcement and jailer training schools.

89 Acts, ch 62, §1, 2 SF 76

Limits on changes during fiscal year beginning July 1, 1989; 89 Acts, ch 317, §2 SF 531

Subsection 1 amended

NEW subsection 8

### **80B.11A Jailer training standards.**

The director of the academy, subject to the approval of the council, and in consultation with the Iowa department of corrections, Iowa state sheriffs' and deputies' association, and the Iowa association of chiefs of police and peace officers, shall adopt rules in accordance with this chapter and chapter 17A establishing minimum standards for training of jailers.

89 Acts, ch 62, §3 SF 76

NEW section

### **80B.13 Authority of council.**

The council may:

1. Designate members to visit and inspect any law enforcement or jailer training schools, or examine the curriculum or training procedures, for which application for approval has been made.

2. Issue certificates to law enforcement training schools qualifying under the regulations of the council.

3. Issue certificates to law enforcement officers and jailers who have met the requirements of this chapter and rules adopted under chapter 17A relative to hiring and training standards.

4. Make recommendations to the governor, the attorney general, the commissioner of public safety and the legislature on matters pertaining to qualification

and training of law enforcement officers and jailers and other matters considered necessary to improve law enforcement services and jailer training.

5. Cooperate with federal, state, and local enforcement agencies in establishing and conducting local or area schools, or regional training centers for instruction and training of law enforcement officers and jailers.

6. Direct research in the field of law enforcement and jailer training and accept grants for such purposes.

7. Accept applications for attendance of the academy from persons other than those required to attend.

8. Revoke a law enforcement officer's certification for the conviction of a felony. In addition the council may consider revocation proceedings when an employing agency recommends to the council that revocation would be appropriate with regard to a current or former employee.

A recommendation by an employing agency must be in writing and set forth the reasons why the action is being recommended, the findings of the employing agency concerning the matter, the action taken by the employing agency, and that the action by the agency is final. Final, as used in this section, means that all appeals through a grievance procedure available to the officer or civil service have been exhausted. The written recommendations shall be unavailable for inspection by anyone except personnel of the employing agency, the council and the affected law enforcement officer, or as ordered by a reviewing court.

The council shall establish a process for the protest and appeal of a revocation made pursuant to this subsection.

9. In accordance with chapter 17A, conduct investigations, hold hearings, appoint hearing examiners, administer oaths and issue subpoenas enforceable in district court on matters relating to the revocation of a law enforcement officer's certification.

10. Secure the assistance of the state division of criminal investigation in the investigation of alleged violations, as provided under section 80.9, subsection 1, paragraphs "c" and "g", of the provisions adopted under section 80B.11.

89 Acts, ch 62, §4 SF 76  
Subsections 1 and 3-6 amended

## CHAPTER 80E

### DRUG ENFORCEMENT AND ABUSE PREVENTION

#### 80E.1 Drug enforcement and abuse prevention coordinator.

1. A drug enforcement and abuse prevention coordinator shall be appointed by the governor, subject to confirmation by the senate, and shall serve at the pleasure of the governor. The governor shall fill a vacancy in the office in the same manner as the original appointment was made. The coordinator shall be selected primarily for administrative ability. The coordinator shall not be selected on the basis of political affiliation and shall not engage in political activity while holding the office. The salary of the coordinator shall be fixed by the governor.

2. The coordinator shall:

a. Coordinate and monitor all statewide narcotics enforcement efforts, coordinate and monitor all state and federal substance abuse treatment grants and programs, coordinate and monitor all statewide substance abuse prevention and education programs in communities and schools, and engage in such other related activities as required by law. The coordinator shall work in coordinating the efforts of the department of corrections, the department of education, the Iowa department of public health, the department of public safety, and the department of human services. The coordinator shall assist in the development and imple-

mentation of local and community strategies to fight substance abuse, including local law enforcement, education, and treatment activities.

b. Submit an annual report to the governor and general assembly by November 1 of each year concerning the activities and programs of the coordinator and other departments related to drug enforcement, substance abuse treatment programs, and substance abuse prevention and education programs. The report shall include an assessment of needs with respect to programs related to substance abuse treatment and narcotics enforcement.

c. Submit an advisory budget recommendation to the governor and general assembly concerning enforcement programs, treatment programs, and education programs related to drugs within the various departments. The coordinator shall work with these departments in developing the departmental budget requests to be submitted to the legislative fiscal bureau and the general assembly.

89 Acts, ch 225, §1 HF 780

Governor's alliance on substance abuse transferred to drug enforcement and abuse prevention coordinator effective July 1, 1990; 89 Acts, ch 225, §5, 34 HF 780  
NEW section

### **80E.2 Drug abuse prevention and education advisory council established—membership—duties.**

1. An Iowa drug abuse prevention and education advisory council is established which shall consist of the following nine members:

a. The drug enforcement and abuse prevention coordinator, who shall serve as chairperson of the council.

b. The director of the department of corrections, or the director's designee.

c. The director of the department of education, or the director's designee.

d. The director of the Iowa department of public health, or the director's designee.

e. The commissioner of public safety, or the commissioner's designee.

f. The director of the department of human services, or the director's designee.

g. A prosecuting attorney.

h. A licensed substance abuse treatment specialist.

i. A law enforcement officer.

The prosecuting attorney, licensed substance abuse treatment specialist, and law enforcement officer shall be appointed by the governor, subject to senate confirmation, for four-year terms beginning and ending as provided in section 69.19. A vacancy on the council shall be filled for the unexpired term in the same manner as the original appointment was made.

2. The council shall make policy recommendations to the appropriate departments concerning the administration, development, and coordination of programs related to substance abuse education, prevention, and treatment.

3. The members of the council shall be reimbursed for actual and necessary travel and related expenses incurred in the discharge of official duties. Each member of the council may also be eligible to receive compensation as provided in section 7E.6.

4. The council shall meet at least quarterly throughout the year.

5. A majority of the members of the council constitutes a quorum, and a majority of the total membership of the council is necessary to act in any matter within the jurisdiction of the council.

89 Acts, ch 225, §2 HF 780

NEW section

### **80E.3 Narcotics enforcement advisory council.**

1. An Iowa narcotics enforcement advisory council is established which shall consist of the following eight members:

a. The drug enforcement and abuse prevention coordinator who shall serve as chairperson.

- b. Two members representing the Iowa association of chiefs of police and peace officers.
- c. Two members representing the Iowa state policemen's association.
- d. Two members representing the Iowa state sheriffs' and deputies' association.
- e. The commissioner of public safety, or the commissioner's designee.

Members under paragraphs "b", "c", and "d" shall be appointed by the governor, subject to senate confirmation, for four-year terms beginning and ending as provided in section 69.19. These members shall not be serving as an officer within their respective associations at the time of appointment or at any time while serving on the advisory council. Appointments shall be made on the basis of experience, knowledge, and ability in the field of narcotics enforcement. A vacancy on the council shall be filled for the unexpired term in the same manner as the original appointment was made. No more than four members shall belong to the same political party. The members of the council shall be reimbursed for actual and necessary travel and related expenses incurred in the discharge of official duties. Each member of the council may also be eligible to receive compensation as provided in section 7E.6.

2. The council shall adopt rules pursuant to chapter 17A.

3. The council shall recommend policy for the operation and conduct of the narcotics enforcement division of the department of public safety.

4. The council shall recommend policy changes and alternatives to the drug abuse prevention and education advisory council established in section 80E.2.

5. A majority of the members of the council constitutes a quorum, and a majority of the total membership of the council is necessary to act in any matter within the jurisdiction of the council.

89 Acts, ch 225, §3 HF 780

Drug enforcement training program for law enforcement officers; 89 Acts, ch 225, §6 HF 780

NEW section

## CHAPTER 85

### WORKERS' COMPENSATION

#### 85.35 Settlement in contested case.

The parties to a contested case, or persons who are involved in a dispute which could culminate in a contested case may enter into a settlement of any claim arising under this chapter or chapter 85A, 85B or 86, providing for final disposition of the claim, provided that no final disposition affecting rights to future benefits may be had when the only dispute is the degree of disability resulting from an injury for which an award for payments or agreement for settlement under section 86.13 has been made. The settlement shall be in writing and submitted to the industrial commissioner for approval. The settlement shall not be approved unless evidence of a bona fide dispute exists concerning any of the following:

- 1. The claimed injury arose out of or in the course of the employment.
- 2. The injured employee gave notice under section 85.23.
- 3. Whether or not the statutes of limitations as provided in section 85.26 have run. When the issue involved is whether or not the statute of limitations of section 85.26, subsection 2, has run, the final disposition shall pertain to the right to weekly compensation unless otherwise provided for in subsection 7 of this section.
- 4. The injury was caused by the employee's willful intent to injure the employee's self or to willfully injure another.
- 5. Intoxication, which did not arise out of and in the course of employment but which was due to the effects of alcohol or another narcotic, depressant, stimulant,

hallucinogenic, or hypnotic drug not prescribed by an authorized medical practitioner, was a substantial factor in causing the employee's injury.

6. The injury was caused by the willful act of a third party directed against the employee for reasons personal to such employee.

7. This chapter or chapter 85A, 85B, 86 or 87 applies to the party making the claim.

8. A substantial portion of the claimed disability is related to physical or mental conditions other than those caused by the injury.

Approval by the industrial commissioner shall be binding on the parties and shall not be construed as an original proceeding. Notwithstanding any provisions of this chapter and chapters 85A, 85B, 86 and 87, an approved settlement shall constitute a final bar to any further rights arising under this chapter and chapters 85A, 85B, 86 and 87. Such payment shall not be construed as the payment of weekly compensation.

89 Acts, ch 60, §2 SF 444  
NEW subsection 8

### 85.61 Definitions.

In this and chapters 86 and 87, unless the context otherwise requires, the following definitions of terms shall prevail:

1. 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.

2. "*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.

3. "*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.

4. 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.

5. "*Pay period*" means that period of employment for which the employer customarily or regularly makes payments to employees for work performed or services rendered.

6. "*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, 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.

7. 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 emergency medical care providers, as defined in section 147.1, or by advanced emergency medical care providers as defined in section 147A.1, 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.

8. 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.

9. "*Spendable weekly earnings*" is that amount remaining after payroll taxes are deducted from gross weekly earnings.

10. "*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.

11. "*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 emergency medical care provider as defined in section 147.1, or an advanced emergency medical care provider as defined in section 147A.1, 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. A basic or advanced emergency medical care provider who is a worker or employee under this paragraph is not a casual employee.

“Worker” or “employee” includes a real estate agent who does not provide the services of an independent contractor. For the purposes of this paragraph a real estate agent is an independent contractor if the real estate agent is licensed by the Iowa real estate commission as a salesperson and both of the following apply:

a. Seventy-five percent or more of the remuneration, whether or not paid in cash, for the services performed by the individual as a real estate salesperson is derived from one company and is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

b. The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee with respect to the services for state tax purposes.

12. 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.

13. 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.

89 Acts, ch 89, §1-3 HF 371; 89 Acts, ch 218, §1 HF 448  
 Subsection 7, unnumbered paragraph 3 amended  
 Subsection 11, unnumbered paragraph 3 amended and NEW unnumbered paragraph 4  
 Subsections 14, 15 and 16 stricken  
 Subsections rearranged to alphabetize

### **85.65 Payments to second injury fund.**

The employer, or, if insured, the insurance carrier in each case of compensable injury causing death, shall pay to the treasurer of state for the second injury fund the sum of four thousand dollars in a case where there are dependents and fifteen thousand dollars in a case where there are no dependents. The payment shall be made at the time compensation payments are begun, or at the time the burial expenses are paid in a case where there are no dependents. However, the payments shall be required only in cases of injury resulting in death coming within the purview of this chapter and occurring after July 1, 1978. These payments shall be in addition to any payments of compensation to injured employees or their dependents, or of burial expenses as provided in this chapter.

89 Acts, ch 33, §1 HF 655  
 1989 amendment effective April 20, 1989; 89 Acts, ch 33, §2 HF 655  
 Section amended

## **CHAPTER 86**

### **INDUSTRIAL COMMISSIONER**

#### **86.2 Appointment of deputies.**

The commissioner may appoint:

1. Chief deputy industrial commissioners for whose acts the commissioner is responsible, who are exempt from the merit system provisions of chapter 19A, and who shall serve at the pleasure of the commissioner.

2. Deputy industrial commissioners for whose acts the commissioner is responsible and who shall serve at the pleasure of the commissioner.

All chief deputies and deputies must be lawyers admitted to practice in this state.

89 Acts, ch 60, §3 SF 444  
 Section amended

## **CHAPTER 87**

### **COMPENSATION LIABILITY INSURANCE**

#### **87.4 Group and self-insured plans—tax exemption—plan approval.**

For the purpose of complying with this chapter, groups of employers by themselves or in an association with any or all of their workers, may form insurance associations as hereafter provided, subject to such reasonable conditions and restrictions as may be fixed by the insurance commissioner; and membership in such mutual insurance organization as approved, together with evidence of the payment of premiums due, shall be evidence of compliance with this chapter.

A self-insurance association formed under this section and an association comprised of cities or counties, or both, which have entered into an agreement under chapter 28E for the purpose of establishing a self-insured program for the payment of workers' compensation benefits are exempt from taxation under section 432.1.

A plan shall be submitted to the commissioner of insurance for review and approval prior to its implementation. The commissioner shall adopt rules for the review and approval of a self-insured group plan provided under this section. The rules shall include, but are not limited to, the following:

1. Procedures for submitting a plan for approval including the establishment of a fee schedule to cover the costs of conducting the review.
2. Establishment of minimum financial standards to ensure the ability of the plan to adequately cover the reasonably anticipated expenses.

A self-insured program for the payment of workers' compensation benefits established by an association comprised of cities or counties, or both, which have entered into an agreement under chapter 28E, is not insurance, and is not subject to regulation under chapters 505 through 523C. Membership in such an association together with payment of premiums due relieves the member from obtaining insurance as required in section 87.1. Such an association is not required to submit its plan or program to the commissioner of insurance for review and approval prior to its implementation and is not subject to rules or rates adopted by the commissioner relating to workers' compensation group self-insurance programs. Such a program is deemed to be in compliance with this chapter.

89 Acts, ch 83, §19 SF 112  
Unnumbered paragraph 4 amended

## CHAPTER 88

### OCCUPATIONAL SAFETY AND HEALTH

#### 88.8 Procedure for enforcement.

1. *Postinspection penalty notice.* If, after an inspection or an investigation, the commissioner issues a citation under section 88.7, the commissioner shall within a reasonable time after the termination of such inspection or investigation notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 88.14 and that the employer has fifteen working days within which to notify the commissioner that the employer wishes to contest the citation or proposed assessment of penalties. If, within fifteen working days from the receipt of the notice issued by the commissioner, the employer fails to notify the commissioner that the employer intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employees or authorized employee representative under subsection 3 of this section within such time, the citation and the assessment, as proposed, shall be deemed a final order of the appeal board and not subject to review by any court or agency.

2. *Noncompliance notice.* If the commissioner has reason to believe that an employer has failed to correct the violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the appeal board in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties), the commissioner shall notify the employer by certified mail of the failure and of the penalty proposed to be assessed under section 88.14 by reason of the failure, and that the employer has fifteen working days within which to notify the commissioner that the employer wishes to contest the commissioner's notification or the proposed assessment of penalty. If, within fifteen working days from the receipt of notification issued by the commissioner, the employer fails to notify the commissioner that the employer intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed the final order of the appeal board and not subject to review by any court or agency.

3. *Contested notice.* If an employer notifies the commissioner that the employer intends to contest a citation issued under section 88.7 or notification issued under subsection 1 or 2 of this section or if, within fifteen working days of the issuance of a citation under section 88.7, any employee or authorized employee representative files a notice with the commissioner alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the commissioner shall immediately advise the appeal board of such notification, and the appeal board shall afford an opportunity for a hearing. The appeal board shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the commissioner's citation or proposed penalty or directing other appropriate relief, and such order shall become final thirty days after its issuance. Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond the employer's reasonable control, the commissioner, after an opportunity for a hearing shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the appeal board shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection, and shall conform to rules of procedure promulgated and adopted under the federal law by federal authorities insofar as the same do not conflict with state law.

The commissioner has unreviewable discretion to withdraw a citation charging an employer with violating this chapter. If the parties enter into a settlement agreement prior to a hearing, the employment appeal board shall enter an order affirming the agreement.

89 Acts, ch 321, §25 HF 779  
Subsection 3, NEW unnumbered paragraph 2

## CHAPTER 88B

### REMOVAL AND ENCAPSULATION OF ASBESTOS

#### 88B.1 Definitions.

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

1. "*Asbestos project*" means an activity involving the removal or encapsulation of asbestos.
2. "*Business entity*" means a partnership, firm, association, corporation, sole proprietorship, or other business concern.
3. "*Commissioner*" means the labor commissioner or the commissioner's designee.
4. "*Division*" means the division of labor services of the department of employment services created under section 84A.1.
5. "*License*" means an authorization issued by the division permitting an individual person, including a supervisor or contractor, to work on an asbestos project, to inspect buildings for asbestos-containing building materials, to develop management plans, and to act as an asbestos project designer.
6. "*Permit*" means an authorization issued by the division permitting a business entity to remove or encapsulate asbestos.

89 Acts, ch 38, §1 SF 435  
Subsections 5 and 6 amended and subsections renumbered to alphabetize

#### 88B.2 Permit required—exceptions.

Except as otherwise provided in this chapter, a business entity shall not engage in the removal or encapsulation of asbestos unless the entity holds a permit for that purpose. This chapter does not apply to a business entity, other than a school,

which uses its own employees in removing or encapsulating asbestos for the purpose of renovating, maintaining or repairing its own facilities, except that a business entity exempted from this chapter which assigns an employee to remove or encapsulate asbestos shall provide training on the health and safety aspects of the removal or encapsulation including the federal and state standards applicable to the asbestos project. The training program shall be available for review and approval upon inspection by the division.

89 Acts, ch 38, §2 SF 435  
Section amended

#### **88B.4 Qualification for permit.**

To qualify for a permit, a business entity shall submit an application to the division in the form required by the division and shall pay the fee prescribed by the division.

89 Acts, ch 38, §3 SF 435  
Section stricken and rewritten

#### **88B.5 Application for license.**

1. To apply for a license, a business entity shall submit an application to the division in the form required by the division and shall pay the fee prescribed by the division.

2. The application shall include information prescribed by rules adopted by the commissioner.

89 Acts, ch 38, §4 SF 435  
Subsection 2 stricken and rewritten

#### **88B.6 Term and renewal.**

1. A permit expires on the first anniversary of its effective date, unless it is renewed for a one-year term as provided in this section.

2. At least one month before the permit expires, the division shall send to the permittee, at the last known address of the permittee, a renewal notice that states:

a. The date on which the current permit expires.

b. The date by which the renewal application must be received by the division for the renewal to be issued and mailed before the permit expires.

c. The amount of the renewal fee.

3. Before the permit expires, the permittee periodically may renew it for an additional one-year term, if the business entity:

a. Otherwise is entitled to a permit.

b. Submits a renewal application to the division in the form required by the division.

c. Pays the renewal fee prescribed by the division.

89 Acts, ch 38, §5 SF 435  
Section amended

#### **88B.7 Records required.**

The permittee shall keep a record of each asbestos project it performs and shall make the record available to the division or department of education at any reasonable time. Records shall contain information and be kept for a time prescribed by the division in rules adopted by the division.

89 Acts, ch 38, §6 SF 435  
Section stricken and rewritten

#### **88B.8 Reprimands, suspensions and revocations.**

1. The division may reprimand a permittee or licensee or suspend or revoke a permit or license, in accordance with chapter 17A, if the permittee or licensee:

a. Fraudulently or deceptively obtains or attempts to obtain a permit or license.

b. Fails at any time to meet the qualifications for a permit or license or to comply with a rule adopted by the commissioner under this chapter.

c. Fails to meet any applicable federal or state standard for removal or encapsulation of asbestos.

d. Employs or permits an unlicensed person to work on an asbestos project.

2. The department of education may reprimand a training institution or suspend or revoke a training institution authorization in accordance with chapter 17A, if the training institution:

a. Fraudulently or deceptively obtains or attempts to obtain a training authorization.

b. Fails at any time to meet the qualifications for authorization or to comply with a rule adopted by the director of the department of education under this chapter.

c. Fails to meet any applicable federal or state standard for training.

89 Acts, ch 38, §7 SF 435

Section amended

### **88B.9 Waivers and alternative procedures.**

1. In an emergency that results from a sudden, unexpected event that is not a planned renovation or demolition, the commissioner may waive the requirement for a license.

2. The commissioner may, on a case-by-case basis, approve an alternative to a specific worker protection requirement for an asbestos project if the business entity submits a written description of the alternative procedure and demonstrates to the commissioner's satisfaction that the proposed alternative procedure provides equivalent worker protection.

3. If the business entity is not primarily engaged in the removal or encapsulation of asbestos, the commissioner may waive the requirement for a license if worker protection requirements are met or an alternative procedure is approved pursuant to subsection 2.

4. The division shall not approve any waivers on work conducted at a school unless the request is accompanied by a recommendation from an asbestos project designer.

89 Acts, ch 38, §8 SF 435

NEW subsection 4

### **88B.10 Licensing of asbestos workers.**

1. An individual person is not eligible to be a contractor or supervisor, or to work on an asbestos project unless the person holds a license issued by the division.

2. An individual person is not eligible to be an inspector for asbestos-containing building material in a school unless the person holds a license issued by the division.

3. An individual person is not eligible to be an asbestos management planner for a school unless the person holds a license issued by the division.

4. An individual person is not eligible to be an asbestos project designer for a school unless the person holds a license issued by the division.

5. To qualify for a license, the applicant must have successfully completed training as established by the department of education, paid a fee, and met other requirements as specified by the division by rule.

6. To qualify for a license as an asbestos abatement worker, supervisor, or contractor, the applicant must have been examined by a physician within the preceding year and declared by the physician to be physically capable of working while wearing a respirator.

7. A license is valid for one year and may be renewed by providing information as required in subsections 5 and 6.

8. The division may suspend or revoke a license, in accordance with chapter 17A, for failure of the licensee to comply with applicable rules.

89 Acts, ch 38, §9 SF 435  
Section stricken and rewritten

### 88B.13 Approval of training courses.

The department of education shall approve training courses and shall adopt rules pursuant to chapter 17A on the qualifications for training courses, fees to be charged for approval of training courses by the department of education, and testing of applicants to verify successful completion of training courses.

89 Acts, ch 38, §10 SF 435  
NEW section

## CHAPTER 89

### BOILERS AND UNFIRED STEAM PRESSURE VESSELS

#### 89.2 Definitions.

For the purpose of this chapter unless the context otherwise requires:

1. "*Boiler*" means a vessel in which water or other liquids are heated, steam or other vapors are generated, steam or other vapors are superheated, or any combination thereof, under pressure or vacuum by the direct application of heat.

2. "*Commissioner*" means the labor commissioner or the labor commissioner's designee.

3. "*Exhibition boiler*" means a boiler which is operated in the state for nonprofit purposes including, but not limited to, exhibitions, fairs, parades, farm machinery shows, or any other event of an historical or educational nature. An "*exhibition boiler*" includes steam locomotives, traction and portable steam engines, and stationary boilers of the firetube, watertube, and returntube class, model or miniature, and may be riveted, riveted and welded, or all welded construction, if used within the state solely for nonprofit purposes.

4. "*Place of public assembly*" means any building or portion of a building designed, intended, and used for occupation by persons for purposes of entertainment, instruction, or amusement and shall include theaters, motion picture theaters, hospitals, places of worship, schools, colleges, and institutions of health and custodial care.

5. "*Power boiler*" means a boiler in which steam or other vapor is generated at a pressure of more than fifteen pounds per square inch or a water boiler intended for operation at pressures in excess of one hundred sixty pounds per square inch or temperatures in excess of 250°-F.

6. "*Special inspector*" means an inspector who holds a commission from the commissioner and who is not a state employee.

7. "*Steam heating boiler*" means a boiler operating at not more than fifteen pounds per square inch; or a hot water heating boiler operating at not more than one hundred sixty pounds per square inch and not more than 250°-F. at the boiler outlet.

8. "*Unfired steam pressure vessel*" means a vessel or container used for the containment of steam pressure either internal or external in which the pressure is obtained from an external source.

89 Acts, ch 321, §26 HF 779  
NEW subsection 3 and subsections rearranged to alphabetize

#### 89.3 Inspection made—certificate.

1. It shall be the duty of the commissioner, to inspect or cause to be inspected internally and externally, at least once every twelve months, except as otherwise provided in this section, in order to determine whether all such equipment is in a

safe and satisfactory condition, and properly constructed and maintained for the purpose for which it is used, all boilers and unfired steam pressure vessels operating in excess of fifteen pounds per square inch, all low pressure heating boilers and unfired steam pressure vessels located in places of public assembly and other appurtenances used in this state for generating or transmitting steam for power, or for using steam under pressure for heating or steaming purposes.

2. The commissioner may enter any building or structure, public or private, for the purpose of inspecting any equipment covered by this chapter or gathering information with reference thereto.

3. Upon making an inspection of any equipment covered by this chapter, the commissioner shall issue to the owner or user thereof a certificate of inspection which certificate shall be posted at a place near the location of the equipment.

4. The owner or user of any equipment covered in this chapter, or persons in charge of same, shall not allow or permit a greater pressure in any unit than is stated in the certificate of inspection issued by the commissioner.

5. The commissioner may inspect boilers and tanks and other equipment stamped with the American Society of Mechanical Engineers code symbol for other than steam pressure, manufactured in Iowa, when requested by the manufacturer.

6. Each boiler of one hundred thousand pounds per hour or more capacity, unfired steam pressure vessel or regulated appurtenance used or proposed to be used within this state, which contains only water subject to internal continuous water treatment under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water where the water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors, and with respect to which vessel the commissioner has determined that the owner or user has complied with the record-keeping requirements prescribed in this chapter, shall be inspected at least once every two years internally and externally while not under pressure, and at least once every two years externally while under pressure. At any time a hydrostatic test is deemed necessary to determine the safety of a vessel, the tests shall be conducted by the owner or user of the equipment under the supervision of the commissioner.

7. The owner or user of a boiler of one hundred thousand pounds per hour or more capacity, unfired steam pressure vessel or regulated appurtenance desiring to qualify for biennial inspection shall keep available for examination by the commissioner accurate records showing the date and actual time the vessel is out of service and the reason it is out of service, and the chemical physical laboratory analyses of samples of the vessel water taken at regular intervals of not more than forty-eight hours of operation as will adequately show the condition of the water and any elements or characteristics of the water which are capable of producing corrosion or other deterioration of the vessel or its parts.

8. Internal inspections of sectional cast iron steam and cast iron hot water heating boilers shall be conducted only as deemed necessary by the commissioner. External operating inspections shall be conducted annually.

9. Internal inspections of steel hot water boilers shall be conducted once every six years. The initial inspection of all affected boilers shall be apportioned by the commissioner over the six-year period after July 1, 1978. External operating inspections shall be conducted annually.

10. All power boilers that are converted to low pressure boilers shall have a fifteen pound safety valve installed and be approved by the commissioner no later than thirty days after the expiration date of the certificate for the boiler.

11. An exhibition boiler does not require an annual inspection certificate but special inspections may be requested by the owner or an event's management to be performed by the commissioner. Upon the completion of an exhibition boiler

inspection a written condition report shall be prepared by the commissioner regarding the condition of the exhibition boiler's boiler or pressure vessel. This report will be issued to the owner and the management of all events at which the exhibition boiler is to be operated. The event's management is responsible for the decision on whether the exhibition boiler should be operated and shall inform the division of labor of the event's management's decision. The event's management is responsible for any injuries which result from the operation of any exhibition boiler approved for use at the event by the event's management. A repair symbol, known as the "R" stamp, is not required for repairs made to exhibition boilers pursuant to the rules regarding inspections and repair of exhibition boilers as adopted by the commissioner, pursuant to chapter 17A.

89 Acts, ch 321, §27 HF 779  
NEW subsection 11

## CHAPTER 89B

### HAZARDOUS CHEMICALS RISKS—RIGHT TO KNOW

#### 89B.8 Information required.

1. An employee in this state has the right to be informed about the hazardous chemicals to which the employee may be exposed in the workplace, the potential health hazards of the hazardous chemicals, and the proper handling techniques for the hazardous chemicals. An employer shall provide or make available to an employee information as required by this chapter. Except as explicitly exempted, this chapter applies to all employers in the state.

2. The division of labor services shall administer this division of the chapter. The division may exercise the enforcement powers set out in chapter 88 and the rules adopted pursuant to chapter 88 to enforce this division of the chapter.

3. The commissioner shall adopt rules based upon the occupational safety and health standards which have been adopted as permanent standards by the United States secretary of labor in accordance with federal law. If the hazardous communication regulation, 29 C.F.R. §1910.1200, is amended or repealed, the commissioner shall review the amendment or repeal and take action with respect to the state standards, including the amendment or repeal of the state standards, which will conform the state standards to the new federal standards.

4. In addition to the chemical information required to be reported under the federal hazard communication standard, 29 C.F.R. §1910.1200, the labor commissioner may adopt by rule additional hazardous chemical information to be regulated.

89 Acts, ch 100, §1 SF 346  
Subsection 3 stricken and rewritten

## CHAPTER 91

### DIVISION OF LABOR SERVICES

#### 91.6 Rules.

The commissioner shall adopt rules pursuant to chapter 17A for the purpose of administering this chapter and all other chapters under the commissioner's jurisdiction.

89 Acts, ch 26, §1 HF 301  
NEW section

#### 91.7 Repealed by 64GA, ch 84, §99.

## CHAPTER 91C

## REGISTRATION OF CONSTRUCTION CONTRACTORS

**91C.7 Contracts—contractor's bond.**

1. A contractor who is not registered with the labor commissioner as required by this chapter shall not be awarded a contract to perform work for the state or an agency of the state.

2. 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 division of labor services of the department of employment services. The surety bond shall be executed by a surety company authorized to do business in this state, and the bond shall be continuous in nature until canceled by the surety with not less than thirty days' written notice to the contractor and to the division of labor services of the department of employment services indicating the surety's desire to cancel the bond. The bond shall be in the sum of the greater of the following:

- a. One thousand dollars.
- b. 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, whichever is less. For purposes of this section "*taxes payable*" means all tax, penalties, interest, and fees that the department of revenue and finance 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.

If it is determined that this subsection may cause denial of federal funds which would otherwise be available, or would otherwise be inconsistent with requirements of federal law, this subsection shall be suspended, but only to the extent necessary to prevent denial of the funds or to eliminate the inconsistency with federal requirements.

89 Acts, ch 254, §1 HF 643  
Section amended

**91C.8 Investigations—enforcement—administrative penalties.**

1. The labor commissioner and inspectors of the division of labor services of the department of employment services have jurisdiction for investigation and enforcement in cases where contractors may be in violation of the requirements of this chapter or rules adopted pursuant to this chapter.

2. If, upon investigation, the labor commissioner or the commissioner's authorized representative believes that a contractor has violated any of the following, the commissioner shall with reasonable promptness issue a citation to the contractor:

- a. The requirement that a contractor be registered.
- b. The requirement that the contractor's registration information be substantially complete and accurate.
- c. The requirement that an out-of-state contractor file a bond with the division of labor services.

Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the statute alleged to have been violated.

If a citation is issued, the commissioner shall, within seven days, notify the contractor by certified mail of the administrative penalty, if any, proposed to be assessed and that the contractor has fifteen working days within which to notify the commissioner that the employer wishes to contest the citation or proposed assessment of penalty.

The administrative penalties which may be imposed under this section shall be not more than five hundred dollars in the case of a first violation and not more than five thousand dollars for each violation in the case of a second or subsequent violation. All administrative penalties collected pursuant to this chapter shall be deposited in the general fund of the state.

If, within fifteen working days from the receipt of the notice, the contractor fails to notify the commissioner that the contractor intends to contest the citation or proposed assessment of penalty, the citation and the assessment, as proposed, shall be deemed a final order of the employment appeal board and not subject to review by any court or agency.

If the contractor notifies the commissioner that the contractor intends to contest the citation or proposed assessment of penalty, the commissioner shall immediately advise the employment appeal board established by section 10A.601. The employment appeal board shall review the action of the commissioner and shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the commissioner's citation or proposed penalty or directing other appropriate relief, and the order shall become final sixty days after its issuance.

The labor commissioner shall notify the department of revenue and finance upon final agency action regarding the citation and assessment of penalty against a registered contractor.

Judicial review of any order of the employment appeal board issued pursuant to this section may be sought in accordance with the terms of chapter 17A. If no petition for judicial review is filed within sixty days after service of the order of the employment appeal board, the appeal board's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the commissioner after the expiration of the sixty-day period. In any such case, the clerk of court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of the decree to the employment appeal board and the contractor named in the petition.

## CHAPTER 91D

### MINIMUM WAGE LAW

#### 91D.1 Minimum wage requirements—exceptions.

1. *a.* The hourly wage stated in the federal minimum wage law, pursuant to 29 U.S.C. §206, shall be increased to \$3.85 on January 1 of 1990, \$4.25 on January 1 of 1991, and \$4.65 on January 1 of 1992.

*b.* Every employer, as defined in the federal Fair Labor Standards Act, shall pay to each of the employer's employees, as defined in the federal Fair Labor Standards Act, wages of not less than the current federal minimum wage, pursuant to 29 U.S.C. §206, or the wage rate stated in paragraph "a", whichever is greater.

*c.* For purposes of determining whether an employee of a restaurant, hotel, motel, inn, or cabin, who customarily and regularly receives more than thirty dollars a month in tips is receiving the minimum hourly wage rate prescribed by this section, the amount paid the employee by the employer shall be deemed to be increased on account of the tips by an amount determined by the employer, not to exceed forty percent of the applicable minimum wage. An employee may file a written appeal with the labor commissioner if the amount of tips received by the employee is less than the amount determined by the employer under this subsection.

*d.* An employer is not required to pay an employee the applicable minimum wage provided in paragraph "a" until the employee has completed ninety calendar days of employment with the employer. An employee who has completed ninety calendar days of employment with the employer prior to January 1 of 1990, 1991, or 1992, shall earn the applicable hourly minimum wage. An employer shall pay an employee who has not completed ninety calendar days of employment with the employer an hourly wage of at least \$3.35 as of January 1 of 1990, \$3.85 as of January 1 of 1991, and \$4.25 as of January 1 of 1992.

2. The exemptions from the minimum wage requirements stated in 29 U.S.C. §213 shall apply, except that the exemption in 29 U.S.C. §213(a)(2) shall only apply to an enterprise which is comprised of one or more retail or service establishments whose annual gross volume of sales made or business done is less than sixty percent of the amount stated in 29 U.S.C. §203(s)(2), exclusive of excise taxes at the retail level that are separately stated.

3. The labor commissioner shall adopt rules to implement and administer this section.

4. This section shall be enforced pursuant to chapter 91A.

89 Acts, ch 14, §1 HF 17  
NEW section

## CHAPTER 93

### ENERGY DEVELOPMENT AND CONSERVATION

#### 93.7 Duties of the department.

The department shall:

1. Deliver to the general assembly by January 15, 1990, a plan for the development, management, and efficient utilization of all energy resources in the state. The plan shall evaluate existing energy utilization with regard to energy efficiency and shall evaluate the future energy needs of the state. The plan shall include but is not limited to the following elements:

- a. The historical use and distribution of energy in Iowa.
- b. The growth rate of energy consumption in Iowa.
- c. A projection of Iowa's energy needs at a minimum of ten years into the future.
- d. The impact of meeting Iowa's energy needs on the economy of the state.
- e. The impact of meeting Iowa's energy needs on the environment of the state.
- f. An evaluation of alternative sources and uses of energy.
- g. Legislative recommendations that may be necessary as a basis for a state policy for the development and efficient utilization of energy resources.
- h. An evaluation of the ability of existing laws and regulations surrounding the utilization of energy resources.

The department shall develop the plan with the assistance of, and in consultation with, representatives of the energy industry, economic interests, the public, and other interested parties. The department shall submit a report to the general assembly concerning the status and implementation of the plan on a biennial basis.

2. Identify a state facility in the state to be used as a marketing tool to promote energy conservation by providing a showcase for the department to demonstrate energy efficiency.

3. The department shall exchange information with other states on energy and especially on the allocation of fuel and shall request all information necessary to determine the reasonableness of any reduction of Iowa's fuel allocation.

4. Establish a central depository within the state for energy data. The department may require a supplier to provide information pertaining to the supply, storage, distribution and sale of energy sources in this state. The information shall be furnished on a periodic basis, shall be of a nature which directly relates to the supply, storage, distribution and sale of energy sources, and shall not include any records, documents, books or other data which relate to the financial position of the supplier. Provided the department, prior to requiring any supplier to furnish it with such information, shall make every reasonable effort to determine if the same is available from any other governmental source. If it finds such information is available, the department shall not require submission of the same from a supplier. Notwithstanding the provisions of chapter 22, information and reports obtained under this section shall be confidential except when used for statistical purposes without identifying a specific supplier and when release of the information will not give an advantage to competitors and serves a public purpose.

The department may subpoena witnesses, administer oaths and require the production of records, books, and documents for examination in order to obtain information required to be submitted under this section. In case of failure or refusal on the part of any person to comply with a subpoena issued by the department, or in case of the refusal of any witness to testify as to any matter regarding which the witness may be interrogated under this chapter, the district court, upon the application of the department, may order the person to show cause why the person should not be held in contempt for failure to testify or comply with a subpoena, and may order the person to produce the records, books, and documents for examination, and to give testimony. The courts may punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify.

5. Develop and recommend public education and communication programs in energy conservation and conversion to alternative sources of energy.

6. When necessary to carry out its duties under this chapter, enter into contracts with state agencies and other qualified contractors.

7. Receive and accept grants made available for programs relating to duties of the department under this chapter.

8. Promulgate rules necessary to carry out the provisions of this chapter; subject to review in accordance with chapter 17A. Rules promulgated by the governor pursuant to a proclamation issued under the provisions of section 93.8 shall not be subject to review or a public hearing as required in chapter 17A; however, agency rules for implementation of the governor's proclamation are subject to the requirements of chapter 17A.

9. Examine and determine whether additional state regulatory authority is necessary to protect the public interest and to promote the effective development, utilization and conservation of energy resources. If the department finds that additional regulatory authority is necessary, the department shall submit recommendations to the general assembly concerning the nature and extent of such regulatory authority and which state agency should be assigned such regulatory responsibilities.

10. Develop and assist in the implementation of public education and communications programs in energy development, use and conservation, in co-operation with the department of education, the state university extension services and other public or private agencies and organizations as deemed appropriate by the department.

11. Develop a program to annually give public recognition to innovative methods of energy conservation.

12. Administer and coordinate federal funds for energy conservation programs including, but not limited to, the institutional conservation program, state energy conservation program, and energy extension service program, and related programs which provide energy management and conservation assistance to schools, hospitals, health-care facilities, communities, and the general public.

13. Administer and coordinate the state building energy management program including projects funded through private financing.

14. Perform monthly fuel surveys which establish a statistical average of motor fuel prices for various motor fuels provided throughout the state. Additionally, the department shall perform monthly fuel surveys in cities with populations of over fifty thousand which establish a statistical average of motor fuel prices for various motor fuels provided in those individual cities. The survey results shall be publicized in a monthly press release issued by the department.

89 Acts, ch 152, §1 HF 660; 89 Acts, ch 297, §2 SF 419  
NEW subsection 2  
Former subsections 2-12 renumbered 3-13  
NEW subsection 14

### **93.13A Energy conservation measures identified and implemented.**

The state, state agencies, political subdivisions of the state, schools, area education agencies, and area schools shall identify and implement, through energy audits and engineering analyses, all energy conservation measures identified for which financing is made available by the department to the entity. The energy conservation measure financings shall be supported through payments from energy savings.

89 Acts, ch 297, §3 SF 419  
NEW section

### **93.14 Energy research and development fund.**

An energy research and development fund is created in the state treasury. Moneys deposited in the fund shall be used for the research and development of selected projects to improve Iowa's energy situation by developing improved methods of energy conservation, by enabling Iowans to better manage available energy resources, or through the increased development and use of Iowa's renewable or nonrenewable energy resources. The moneys credited to the fund under section 556.18 shall be used for energy conservation or alternative energy resource projects or for both purposes. The projects shall be selected by the

director. Selection criteria for funded projects shall include consideration of indirect restitution to those persons in this state in the utility customer classes and the utility service territories affected by unclaimed utility refunds or deposits. The projects funded from the energy research and development fund shall be administered by the department.

The energy fund disbursement council created in section 93.11, subsection 3, will oversee and approve the expenditure of funds in the energy research and development fund.

89 Acts, ch 312, §5 HF 789  
NEW unnumbered paragraph 2

## 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 notified of an assignment of income by the child support recovery unit under chapter 252D or section 598.22 or 598.23 or is garnisheed 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 garnisheed 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 income assignment, garnishment, attachment, or execution if assigned to or garnished by the child support recovery unit, established in section 252B.2, or if an assignment under section 598.22 or 598.23 is being enforced by the child support recovery unit 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.

89 Acts, ch 11, §1, 2 HF 195

Subsection 9, paragraph c, unnumbered paragraphs 1 and 3 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 an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

b. If an enterprise or business, or a clearly segregable and identifiable part of an enterprise or business, for which contributions have been paid is sold or transferred to a subsequent employing unit, or if one or more employing units have been reorganized or merged into a single employing unit, and the successor employer, having qualified as an employer as defined in section 96.19, subsection 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 contribution 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 twelve 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.

(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.

Benefit Ratio Rank	Approximate Cumulative Taxable Payroll 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 administrative law judge 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 since January 1, 1980, which sum is divided by the total taxable wages reported by governmental contributory employers during the calendar year immediately preceding the computation date, rounded to the next highest one-tenth of one percent. Excess contributions from the years 1978 and 1979 shall be used to offset benefits paid in any calendar year where total benefits exceed total contributions of governmental contributory employers. The contribution rate as a 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 employing 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 or for the division-approved training fund funded in section 8, subsection 2, of 1988 Iowa Acts, chapter 1274.

d. This subsection is repealed July 1, 1990, and the repeal is applicable to contribution rates for calendar year 1991 and subsequent calendar years.

89 Acts, ch 296, §14 SF 141

Exception to subsection 12, paragraph c, for 1989-1990 fiscal year; 89 Acts, ch 321, §6 HF 779  
Subsection 7, paragraph b, unnumbered paragraph 4 amended

### 96.8 Conditions and requirements.

1. *Period of coverage.* Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year.

2. *Voluntary termination.* Except as otherwise provided in subsection 3 of this section, an employing unit ceases to be an employer subject to this chapter, as of the first day of January of any year, if it files with the division of job service, prior to the fifteenth day of February of that year, a written application for termination of coverage, and the division finds that the employing unit did not meet any of the qualifying liability requirements as provided under section 96.19, subsection 5, in the preceding calendar year.

#### 3. *Election by employer.*

a. An employing unit, not otherwise subject to this chapter, which files with the division of job service its written election to become an employer subject hereto for not less than two calendar years, shall with the written approval of such election by the division, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if prior to the fifteenth day of February of such year, it has filed with the division a written notice to that effect.

b. Any employing unit for which services that do not constitute employment as defined in this chapter are performed, may file with the division a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this chapter for not less than two calendar years. Upon the written approval of such election by the division, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if prior to the fifteenth day of February of such year such employing unit has filed with the division a written notice to that effect.

#### 4. *Transfer or discontinuance of business.*

a. In any case in which the enterprise or business of a subject employer has been sold or otherwise transferred to a subsequent employing unit or reorganized

or merged into a single employing unit under the provisions of section 96.7, subsection 2, paragraph "b", the account of the transferring employer shall terminate as of the date on which such transfer, reorganization or merger was completed.

b. In any case in which the enterprise or business of a subject employer has been discontinued otherwise than by sale or transfer to a subsequent employing unit and such employer has had no employment for a period of one year, the division of job service may, on its own motion, terminate said account.

5. *Liability of certain employers.* Employers who by election or determination of the division of job service are liable for payments in lieu of contributions shall not be relieved of any regular benefit charges or extended benefit charges by any provision of this chapter.

89 Acts, ch 296, §15 SF 141  
Subsection 4, paragraph a 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, reports, and confidentiality.*

a. An employing unit shall keep true and accurate work records, containing information required by the division. The records shall be open to inspection and copying by an authorized representative of the division at any reasonable time and as often as necessary. An authorized representative of the division may require from an employing unit a sworn or unsworn report, with respect to individuals employed by the employing unit, which the division 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 determination made by a representative of the division 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 employing unit or the individual, except as provided in subparagraph (3) or paragraph "c".

(2) A report or statement, whether written or verbal, made by a person to a representative of the division or to another person administering this law is a privileged communication. A person is not liable for slander or libel on account of the report or statement unless the report or statement is made with malice.

(3) Information obtained from an employing unit or individual in the course of administering this chapter and an initial determination made by a representative of the division 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 which may affect a claim for benefits or a change in an employer's rating account shall be made available to the interested parties. The information may be used by the interested 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 an initial determination made by a representative of the division under

section 96.6, subsection 2, as to benefit rights of an individual may be made available for purposes consistent with the purposes of this chapter 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 internal revenue service 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 individuals.

(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 an employing unit or individual.

(7) An employee of the department, 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, governmental entity, or nonprofit organization having an interest in the administration of job training programs established pursuant to the federal Job Training Partnership Act.

(9) The United States department of housing and urban development and representatives of a public housing agency.

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 the law of this or another state or federal law, or which is charged with a duty or responsibility under the program, and if the agency is required by law to impose safeguards for the confidentiality of information at least as effective as required under this subsection, then the division shall provide to the requesting agency, with respect to any named individual without regard to paragraph "g", any of the following information:

(1) Whether the individual is receiving or has received benefits, or has made an application for benefits under this chapter.

(2) The period, if any, for which benefits were payable and the weekly benefit amount.

(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) The individual's wage information.

e. The division may require an agency which is provided information under this subsection to reimburse the division for the costs of furnishing the information.

f. An employee of the division, an administrative law judge, or a member of the appeal board who violates this subsection is guilty, upon conviction, of a serious misdemeanor.

g. Information subject to the confidentiality of this subsection shall not be directly released to any authorized agency unless an attempt is made to provide written notification to the individual involved. Information released in accordance with criminal investigations by a law enforcement agency of this state, another state, or the federal government is exempt from this requirement.

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.

14. *Access to available jobs list.* The division of job service shall make available for consultation by the public, at each of the division's offices, a list of current job openings listed with the division, provided that the list shall comply with the confidentiality requirements of subsection 7, or those mandated by the federal government.

15. *Special contractor numbers.* For purposes of contractor registration under chapter 91C, the division of job service shall provide for the issuance of special contractor numbers to contractors for whom employer accounts are not required under this chapter. A contractor who is not in compliance with the requirements of this chapter shall not be issued a special contractor number.

89 Acts, ch 117, §1 HF 637  
Subsection 7 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.

45. "*Public housing agency*" means any agency described in section 3(b)(6) of the United States Housing Act of 1937, as amended through January 1, 1989.

89 Acts, ch 117, §2 HF 637  
NEW subsection 45

### 96.31 Tax for benefits.

Political subdivisions may levy a tax outside their general fund levy limits to pay the cost of unemployment benefits. For school districts the cost of unemployment benefits shall be included in the district management levy pursuant to section 298.4.

89 Acts, ch 135, §51 HF 535  
1989 amendment takes effect July 1, 1990, for purpose of computations required for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535  
Section amended

## CHAPTER 97A

### PUBLIC SAFETY PEACE OFFICERS' RETIREMENT, ACCIDENT AND DISABILITY SYSTEM

#### 97A.12 Exemption from execution and other process or assignment.

The right of any person to a pension, annuity, or retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or death benefit, any other right accrued or accruing to any person under this chapter, and the moneys in the various funds created under this chapter, are not subject to execution, garnishment, attachment, or any other process whatsoever, and are unassignable except as in this chapter specifically provided.

89 Acts, ch 228, §1 SF 539  
1989 amendment applies retroactively to January 1, 1989, for tax years beginning on or after that date; 89 Acts, ch 228, §10 SF 539  
Section amended

## CHAPTER 97B

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

**97B.7 Fund created—trustee's duties—investments.**

1. There is hereby created as a special fund, separate and apart from all other public moneys or funds of this state, the "Iowa Public Employees' Retirement Fund", hereafter called the "retirement fund". This fund shall consist of all moneys collected under this chapter, together with all interest, dividends and rents thereon, and shall also include all securities or investment income and other assets acquired by and through the use of the moneys belonging to this fund and any other moneys that have been paid into this fund.

2. The treasurer of the state of Iowa is hereby made the custodian and trustee of this fund and shall administer the same in accordance with the directions of the department. It shall be the duty of the trustee:

a. To hold said trust funds.

b. To invest, subject to chapter 12A, the portion of the retirement fund which in the judgment of the department is not needed for current payment of benefits under this chapter. The department shall execute the disposition and investment of moneys in the retirement fund in accordance with the investment policy and goal statement established by the investment board. In the investment of the fund, the department and investment board shall exercise the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for the purpose of speculation, but with regard to the permanent disposition of the funds, considering the probable income, as well as the probable safety, of their capital. Within the limitations of the standard prescribed in this section, the treasurer of state, the department, and the board may acquire and retain every kind of property and every kind of investment which persons of prudence, discretion, and intelligence acquire or retain for their own account.

The department and investment board shall give appropriate consideration to those facts and circumstances that the department and investment board know or should know are relevant to the particular investment involved, including the role the investment plays in the total value of the retirement fund.

For the purposes of this paragraph, appropriate consideration includes, but is not limited to, a determination by the department and investment board that the particular investment is reasonably designed to further the purposes of the retirement system, taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment and consideration of the following factors as they relate to the retirement fund:

- (1) The composition of the retirement fund with regard to diversification.
- (2) The liquidity and current return of the investments in the fund relative to the anticipated cash flow requirements of the retirement system.
- (3) The projected return of the investments relative to the funding objectives of the retirement system.

Consistent with this paragraph, investments made under this paragraph shall be made in a manner that will enhance the economy of this state, and in particular, will result in increased employment of the residents of this state. Investments of moneys in the fund are not subject to sections 73.15 through 73.21.

Except as provided in section 97B.4, if there is loss to the fund, the treasurer, the department, and the board are not personally liable, and the loss shall be charged against the retirement fund. There is appropriated from the retirement fund the amount required to cover a loss. Expenses incurred in the sale and purchase of securities belonging to the retirement fund shall be charged to the retirement fund, and there is appropriated from the retirement fund the amount required for

the expenses incurred. Investment management expenses shall be charged to the investment income of the retirement fund, and there is appropriated from the retirement fund the amount required for the investment management expenses, subject to the limitations stated in this unnumbered paragraph. The amount appropriated for a fiscal year under this unnumbered paragraph shall not exceed one-half percent of the market value of the retirement fund. The department shall report the investment management expenses for a fiscal year as a percent of the market value of the retirement fund in the annual report to the governor required in section 97B.4. A person who has signed a contract with the department for investment management purposes shall meet the requirements for doing business in Iowa sufficient to be subject to tax under rules of the department of revenue and finance.

c. To disburse such trust funds upon warrants drawn by the director of revenue and finance pursuant to the order of the department.

d. To sell any securities or other property in the trust fund and reinvest the proceeds in accordance with the direction of the department when such action may be deemed advisable by the department for the protection of the trust fund or the preservation of the value of the investment. Such sale of securities or other property of the trust fund shall only be made after advice from the investment board in the manner and to the extent provided in this chapter in regard to the purchase of investments.

e. To subscribe, in accordance with the direction of the department, for the purchase of securities for future delivery in anticipation of future income. Such securities shall be paid for by such anticipated income or from funds from the sale of securities or other property held by the fund.

f. To pay for securities directed to be purchased by the department on the receipt of the purchasing bank's paid statement or paid confirmation of purchase.

3. All moneys which are paid or deposited into this fund are hereby appropriated and made available to the department to be used only for the purposes herein provided:

a. To be used by the department for the payment of retirement claims for benefits under this chapter, or such other purposes as may be authorized by the general assembly.

b. To be used by the department to pay refunds provided for in this chapter.

89 Acts, ch 83, §20 SF 112

Subsection 2, paragraph b, unnumbered paragraph 1 amended

### **97B.39 Rights not transferable—not subject to legal process.**

The right of any person to any future payment under this chapter is not transferable or assignable, at law or in equity, and the moneys paid or payable or rights existing under this chapter are not subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

89 Acts, ch 228, §2 SF 539

1989 amendment applies retroactively to January 1, 1989, for tax years beginning on or after that date; 89 Acts, ch 228, §10 SF 539

Section amended

## **CHAPTER 98**

### **CIGARETTE AND TOBACCO TAXES**

#### **98.22 Revocation of permit.**

1. If a person holding a permit issued by the department under this division, including a retailer permit for railway car, has willfully violated section 98.2, the department shall revoke the permit upon notice and hearing. If the person

violates any other provision of this division, or a rule adopted under this division, or is substantially delinquent in the payment of a tax administered by the department or the interest or penalty on the tax, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the permit-holding corporation, or interest or penalty on the tax, administered by the department, the department may revoke the permit issued to the person, after giving the permit holder an opportunity to be heard upon ten days' written notice stating the reason for the contemplated revocation and the time and place at which the person may appear and be heard. The hearing before the department may be held at a site in the state as the department may direct. The notice shall be given by mailing a copy to the permit holder's place of business as it appears on the application for a permit. If, upon hearing, the department finds that the violation has occurred, the department may revoke the permit.

2. If any retailer has violated any of the provisions of section 98.2, the board of supervisors or the city council which issued the permit shall revoke the retailer's permits and if any retailer violates any other provisions of this division, the board of supervisors or the city council which issued the permit may revoke the retailer's permits upon the same hearing and notice as prescribed in subsection 1.

3. If a permit is revoked a new permit shall not be issued to the permit holder for any place of business, or to any other person for the place of business at which the violation occurred, until one year has expired from the date of revocation, unless good cause to the contrary is shown to the issuing authority.

89 Acts, ch 251, §1 SF 154  
Subsection 1 amended

### **98.37 Violation as fraudulent practice.**

A person who violates a provision of this division is guilty of a fraudulent practice unless otherwise provided in this division.

89 Acts, ch 251, §2 SF 154  
Section amended

### **98.44 Licenses—distributors, subjobbers.**

1. No person shall engage in the business of a distributor or subjobber of tobacco products at any place of business without first having received a license from the director to engage in that business at that place of business.

2. Every application for such a license shall be made on a form prescribed by the director and shall state the name and address of the applicant; if the applicant is a firm, partnership, or association, the name and address of each of its members; if the applicant is a corporation, the name and address of each of its officers; the address of its principal place of business; the place where the business to be licensed is to be conducted; and such other information as the director may require for the purpose of the administration of this division.

3. A person without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers, may make application for a license as a distributor, be granted a license by the director, and thereafter be subject to all the provisions of this division and entitled to act as a licensed distributor.

4. Each application for a distributor's license shall be accompanied by a fee of twenty-five dollars, except that no applicant holding a permit pursuant to division I of this chapter shall be required to pay an additional fee. The application shall also be accompanied by a corporate surety bond issued by a surety licensed to do business in this state, in the sum of one thousand dollars, conditioned upon the true and faithful compliance by the distributor with all the provisions of this division and the payment when due of all taxes, penalties and accrued interest arising in the ordinary course of business or by reason of any delinquent money

which may be due the state of Iowa. This bond shall be in a form to be fixed by the director and approved by the attorney general. Whenever it is the opinion of the director that the bond given by a licensee is inadequate in amount to fully protect the state, the director shall require either an increase in the amount of said bond or additional bond, in such amount as the director deems sufficient. Any bond required by this subdivision, or a reissue thereof, or a substitute therefor, shall be kept in full force and effect during the entire period covered by the license.

A separate application for license shall be made for each place of business at which a distributor proposes to engage in business as such under this division.

5. Each application for a subjobber's license shall be accompanied by a fee of ten dollars, except that no applicant holding a permit pursuant to division I of this chapter shall be required to pay an additional fee.

6. A distributor or subjobber applying for a license between January 1 and June 30 of any year shall be required to pay only one-half of the license fee provided for herein.

7. The director, upon receipt of the application (and bond, in the case of the distributor) in proper form, and payment of the license fee required by subsection 4 or subsection 5, shall unless otherwise provided by this division, issue the applicant a license in form as prescribed by the director, which license shall permit the applicant to whom it is issued to engage in business as a distributor or subjobber at the place of business shown in the application. The director shall assign a permit number to each person licensed as a distributor at the time of issuance of the person's first license, which shall be inscribed upon all licenses issued to that distributor.

8. Each license shall expire on June 30 following its date of issue unless sooner revoked by the director or unless the business with respect to which the license was issued is transferred. In either case the holder of the license shall immediately surrender it to the director.

9. Each license shall be prominently displayed on the premises covered by the license.

10. No license shall be transferable to any other person.

11. The director may revoke, cancel, or suspend the license or licenses of any distributor or subjobber for violation of any of the provisions of this division, or any other act applicable to the sale of tobacco products, or any rule or regulations promulgated by the director in furtherance of this division. No license shall be revoked, canceled, or suspended except after notice and a hearing by the director as provided in section 98.48.

12. No license shall be issued under this division to any person within one year of the date of final determination of a revocation of any previous license held by the person.

13. When the surety upon any bond issued pursuant to the provisions of this division shall have fulfilled the conditions of such bond and compensated the state for any loss occasioned by any act or omission of the person bonded under this division, such surety shall be subrogated to all the rights of the state in connection with the transaction wherein such loss occurred.

89 Acts, ch 251, §3 SF 154  
Subsection 3 amended

## CHAPTER 99B

### GAMES OF SKILL OR CHANCE, AND RAFFLES

#### 99B.1 Definitions.

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

1. "*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.

2. "*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.

3. "*Applicant*" means an individual or an organization.

4. "*Authorized*" means approved as a concession by the Iowa state fair board or a county or district fair or agricultural society holding a fair.

5. "*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.

6. "*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.

7. "*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.

8. "*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.

9. 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.

10. "*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.

11. "*Department*" means the department of inspections and appeals.

12. "*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 department by rule under chapter 17A so as to

satisfy the director of the department 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 director of the department 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.

13. "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.

14. "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.

15. "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.

16. "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.

17. "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.

18. "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 department shall not exceed thirty\* percent of net receipts.

19. "Net rent" means the total rental charge minus reasonable expenses, charges, fees, and deductions allowed by the department.

20. "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.

21. "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.

22. "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.

23. “*Social games*” means and includes only the activities permitted by section 99B.12, subsection 2.

89 Acts, ch 231, §13-15 HF 490

\*Corrective legislation is pending to change this to twenty-five percent because seventy-five percent of net receipts must be dedicated; §99B.7(3)

Subsection 11 stricken and rewritten

Subsection 12, paragraphs a and c amended

Subsections 18 and 19 amended

Subsections rearranged to alphabetize

### **99B.2 Licensing — records required — bingo accounts — inspections—penalties.**

1. The department of inspections and appeals shall issue the licenses required by this chapter. A license shall not be issued, except upon submission to the department of an application on forms furnished by the department, and the required license fee. A license may be issued to an eligible applicant. An authorization number to operate may be issued to an applicant until a license is issued. However, a license or authorization number 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 department of inspections and appeals, the licensee shall be notified by the department of inspections and appeals 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 department, 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 department 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 department on forms furnished by the department. 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 department 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 department 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 department or a law enforcement agency for inspection with or without notice at reasonable times. A failure to permit inspection is a serious misdemeanor.

89 Acts, ch 231, §16 HF 490  
Subsections 2, 4 and 5 amended

#### **99B.6 Games where liquor or beer is sold.**

1. Except as provided in subsections 5, 6, 7, and 8, 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 fifty 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 department 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.

8. Gambling games authorized under chapter 99F may be conducted on an excursion gambling boat which is licensed as an establishment that serves or sells alcoholic beverages, wine, or beer as defined in section 123.3 if the gambling games are conducted pursuant to chapter 99F and rules adopted under chapter 99F. Notwithstanding section 123.3, subsection 12, paragraph "b", a person holding a federal gambling permit and licensed to conduct gambling games pursuant to chapter 99F may hold a liquor license.

89 Acts, ch 67, §20, 21 SF 124; 89 Acts, ch 231, §17 HF 490  
 Subsection 1, unnumbered paragraph 1 amended  
 Subsection 1, paragraph j amended  
 NEW subsection 8

### **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, except as otherwise provided in this paragraph, shall not exceed one hundred dollars. Merchandise prizes may be awarded in the game of bingo, but 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 the maximum provided by this paragraph. A jackpot bingo game may be conducted once during any twenty-four hour period in which the prize may begin at not more than three hundred dollars in cash or actual retail value of merchandise prizes and may be increased by not more than one hundred dollars after each bingo occasion. However, the cost of play in a jackpot bingo game shall not be increased and the jackpot shall not amount to more than eight hundred 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 value of a prize shall not exceed fifty dollars and merchandise prizes shall not be repurchased. If a prize consists of more than one item, unit, or part, the aggregate value of all items, units, or parts shall not exceed fifty dollars. However, one raffle may be conducted per calendar year at which prizes having a combined 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 department 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, 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's 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.* A licensee 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. A licensee is subject to license revocation if it knowingly permits a person to serve in one of these capacities if the person was a manager, cashier, or responsible for carrying out duties with respect to a bingo account for another licensee at the time of one or more violations leading to revocation of the other licensee's license, and if the license is still revoked at the time of the subsequent service.

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 department of inspections and appeals 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 fifty 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-five 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-five 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 department for special permission and upon good cause shown the department 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.

89 Acts, ch 231, §18-21 HF 490

Subsection 1, paragraph c, unnumbered paragraph 1 amended

Subsection 1, paragraphs d and m amended

Subsection 3, paragraph b amended

Subsection 3, paragraph c, unnumbered paragraph 1 amended

### 99B.9 Gambling in public places.

1. Except as otherwise permitted by section 99B.3, 99B.5, 99B.6, 99B.7, 99B.8, or 99B.11, it is unlawful to permit gambling on any premises owned, leased, rented, or otherwise occupied by a person other than a government, governmental agency or subdivision, unless all of the following are complied with:

a. The person occupying the premises as an owner or tenant has submitted an application for a license and an application fee of one hundred dollars, and has been issued a license for those premises, and prominently displays the license on the premises.

b. The holder of the license or any agent or employee of the license holder does not participate in, sponsor, conduct, or promote, or act as cashier or banker for any gambling activities.

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 other consideration equivalent thereto in all games and activities at any one 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 department or a law enforcement agency is immediately admitted, upon request, to the premises with or without advance notice.

2. The holder of a license issued pursuant to this section shall be strictly accountable for maintaining compliance with subsection 1, and proof of any violation shall constitute grounds for revocation of the license issued pursuant to this section, whether or not the holder of the license had knowledge of the facts 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 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. This section shall not apply to premises or portions of premises constituting the living quarters of the actual residence of an individual if that individual is a participant in the activities permitted by this section.

89 Acts, ch 231, §22 HF 490  
Subsection 1, paragraph j amended

#### **99B.9A Exceptions for certain areas.**

The department may, at its discretion, allow a qualified organization under section 99B.7 to hold a game of bingo in a building where another qualified organization also holds a game of bingo or where the building is adjacent, but not intraconnected, with an establishment holding a liquor license and the building is located in a municipality of a recorded census of less than two thousand people and the municipality is not located adjacent to another municipality.

89 Acts, ch 231, §23 HF 490  
Section amended

#### **99B.10 Electrical and mechanical 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.

89 Acts, ch 231, §24 HF 490  
Subsection 1 stricken and rewritten

#### **99B.13 Administrative rules.**

The department may adopt rules pursuant to chapter 17A to carry out the provisions of this chapter. Rules adopted by the department may include but are not limited to the following:

1. Descriptions of books, records and accounting required.
2. Requirements for qualified organizations.
3. Methods of displaying costs and explanations of games and rules.

#### 4. Defining unfair or dishonest games, acts or practices.

89 Acts, ch 231, §25 HF 490  
Unnumbered paragraph 1 amended

#### **99B.14 Revocation of license.**

The department shall revoke a license issued pursuant to this chapter if the licensee or an agent of the licensee violates or permits a violation of a provision of this chapter, or a departmental rule adopted pursuant to chapter 17A, or if a cause exists for which the director of the department would have been justified in refusing to issue a license, or upon the conviction of a person of a violation of this chapter or a rule adopted under this chapter which occurred on the licensed premises. However, the revocation of one type of gambling license does not require the revocation of a different type of gambling license held by the same licensee.

Revocation proceedings shall be held only after giving notice and an opportunity for hearing to the licensee. Notice shall be given at least ten days in advance of the date set for hearing. If the department finds cause for revocation, the license shall be revoked for a period not to exceed two years.

89 Acts, ch 231, §26 HF 490  
Section amended

#### **99B.15 Applicability of chapter.**

It is the intent and purpose of this chapter to authorize gambling in this state only to the extent specifically permitted by a section of this chapter or chapter 99D, 99E, or 99F. Except as otherwise provided in this chapter, the knowing failure of any person to comply with the limitations imposed by this chapter constitutes unlawful gambling, a serious misdemeanor.

89 Acts, ch 67, §22 SF 124  
Section amended

#### **99B.17 Gambling on credit unlawful.**

A person who tenders and a person who receives any promise, agreement, note, bill, bond, contract, mortgage or other security, or any negotiable instrument, as consideration for any wager or bet, whether or not lawfully conducted or engaged in pursuant to this chapter, commits a misdemeanor. However, a participant in a bingo occasion or in a contest lawful under section 99B.11 may make payment by personal check for any entry or participation fee assessed by the sponsor of the bingo occasion or contest.

89 Acts, ch 231, §27 HF 490  
Section amended

#### **99B.19 Attorney general and county attorney—prosecution.**

Upon request 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.

89 Acts, ch 231, §28 HF 490  
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 department of inspections and

appeals. The criminal investigation division and the department of inspections and appeals shall cooperate to the maximum extent possible on an investigation.

89 Acts, ch 231, §29 HF 490  
Section amended

## CHAPTER 99D

### PARI-MUTUEL WAGERING AND EXCURSION BOAT GAMBLING

#### 99D.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. "*Applicant*" means an individual applying for an occupational license or the officers and members of the board of directors of a nonprofit corporation applying for a license to conduct a race where pari-mutuel wagering would be permitted under this chapter.

2. "*Breakage*" means the odd cents by which the amount payable on each dollar wagered in a pari-mutuel pool exceeds a multiple of ten cents.

3. "*Commission*" means the state racing and gaming commission created under section 99D.5.

4. "*Holder of occupational license*" means a person licensed by the commission to perform an occupation which the commission has identified as requiring a license to engage in within the racing industry in Iowa.

5. "*Licensee*" means a nonprofit corporation licensed under section 99D.9.

6. "*Pari-mutuel wagering*" means the system of wagering described in section 99D.11.

7. "*Race*", "*racings*", "*race meeting*", "*track*", and "*racetrack*" refer to dog racing and horse racing, including, but not limited to, quarterhorse, thoroughbred, and harness racing, as approved by the commission.

8. "*Racetrack enclosure*" means the grandstand, clubhouse, turf club or other areas of a licensed racetrack which a person may enter only upon payment of an admission fee or upon presentation of authorized credentials. "*Racetrack enclosure*" also means any additional areas designated by the commission.

89 Acts, ch 67, §23 SF 124  
Subsection 3 amended

#### 99D.5 Creation of state racing and gaming commission.

1. A state racing and gaming commission is created within the department of inspections and appeals consisting of five members who shall be appointed by the governor subject to confirmation by the senate, and who shall serve not to exceed a three-year term at the pleasure of the governor. The term of each member shall begin and end as provided in section 69.19.

2. A vacancy on the commission shall be filled as provided in section 2.32.

3. Not more than three members of the commission shall belong to the same political party and no two members of the commission shall reside, when appointed, in the same congressional district. A member of the commission shall not have a financial interest in a racetrack.

4. Commission members are each entitled to receive an annual salary of six thousand dollars. Members shall also be reimbursed for actual expenses incurred in the performance of their duties to a maximum of six thousand dollars per year for each member. Each member shall post a bond in the amount of ten thousand dollars, with sureties to be approved by the governor, to guarantee the proper handling and accounting of moneys and other properties required in the administration of this chapter. The premiums on the bonds shall be paid as other expenses of the commission.

5. A member or a holder of an official's license shall not knowingly:

a. Have a pecuniary, equitable, or other interest in or engage in a business or employment which would be a conflict of interest or interfere or conflict with the proper discharge of the duties of the commission including any of the following:

- (1) A business which does business with a licensee.
- (2) A business issued a concession operator's license.

b. Participate directly or indirectly as an owner, owner-trainer, trainer of a horse or dog, or jockey of a horse in a race meeting conducted in this state.

c. Place a wager on an entry in a race or on a gambling game operated on an excursion gambling boat.

A violation of this subsection is a serious misdemeanor. In addition, the individual may be subject to disciplinary actions pursuant to the commission rules.

6. A member, employee, or appointee of the commission, spouse of a member, employee, or appointee of the commission, or a family member related within the second degree of affinity or consanguinity to a member, employee, or appointee of the commission shall not do either of the following:

a. Hold an occupational license except an official's license.

b. Enter directly or indirectly into any business dealing, venture, or contract with an owner or lessee of a racetrack.

A member who knowingly approves of a violation of this subsection is guilty of a serious misdemeanor.

89 Acts, ch 67, §24, 25 SF 124; 89 Acts, ch 83, §21 SF 112; 89 Acts, ch 231, §30 HF 490

See Code editor's note to §22.7

Subsection 1 amended

Subsection 5, paragraph c amended

### **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 commission 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 commission'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 commission 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 the salary range as set by the general assembly. The commission 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.

89 Acts, ch 231, §31 HF 490

Section amended

### **99D.7 Powers.**

The commission shall have full jurisdiction over and shall supervise all race meetings governed by this chapter. The commission shall have the following powers and shall adopt rules pursuant to chapter 17A to implement this chapter:

1. To investigate applicants and determine the eligibility of applicants for a license and to select among competing applicants for a license the applicant which best serves the interests of the citizens of Iowa.

2. To identify occupations within the racing industry which require licensing and adopt standards for licensing the occupations including establishing fees for

the occupational licenses. The fees shall be paid to the commission and used as required in section 99D.17 and section 99D.18.

3. To adopt standards under which all race meetings shall be held and standards for the facilities within which the race meetings shall be held.

4. To regulate the purse structure for race meetings including establishing a minimum purse.

5. To cooperate with the department of agriculture and land stewardship to establish and operate, or contract for, a laboratory and related facilities to conduct saliva, urine, and other tests on animals that are to run or that have run in races governed by this chapter.

6. To establish and provide for the disposition of fees for the testing of animals sufficient to cover the costs of the tests and to purchase the necessary equipment for the testing.

7. To enter the office, racetrack, facilities, or other places of business of a licensee to determine compliance with this chapter.

8. To investigate alleged violations of this chapter or the commission rules, orders, or final decisions and to take appropriate disciplinary action against a licensee or a holder of an occupational license for the violation, or institute appropriate legal action for enforcement, or both. Decisions by the commission are final agency actions pursuant to chapter 17A.

9. To authorize stewards, starters, and other racing officials to impose fines or other sanctions upon a person violating a provision of this chapter or the commission rules, orders, or final orders, including authorization to expel a tout, bookmaker, or other person deemed to be undesirable from the racetrack facilities.

10. To require the removal of a racing official, an employee of a licensee, or a holder of an occupational license, or employee of a holder of an occupational license for a violation of this chapter or a commission rule or engaging in a fraudulent practice.

11. To prevent an animal from racing if the commission or commission employees with cause believe the animal or its owner, trainer, or an employee of the owner or trainer is in violation of this chapter or commission rules.

12. To withhold payment of a purse if the outcome of a race is disputed or until tests are performed on the animals to determine if they were illegally drugged.

13. To provide for immediate determination of the disposition of a challenge by a racing official or representative of the commission by establishing procedures for informal hearings before a panel of stewards at a racetrack.

14. To require a licensee to file an annual balance sheet and profit and loss statement pertaining to the licensee's racing activities in this state, together with a list of the stockholders or other persons having any beneficial interest in the racing activities of each licensee.

15. To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records and other pertinent documents in accordance with chapter 17A, and to administer oaths and affirmations to the witnesses, when, in the judgment of the racing commission, it is necessary to enforce this chapter or the commission rules.

16. To keep accurate and complete records of its proceedings and to certify the records as may be appropriate.

17. To require all licensees to use a computerized totalisator system for calculating odds and payouts from the pari-mutuel wagering pool and to establish standards to insure the security of the totalisator system.

18. To revoke or suspend licenses and impose fines not to exceed one thousand dollars.

19. To require licensees to indicate in their racing programs those horses to which the drugs lasix or phenylbutazone were administered within ten days before the race or to which the drugs are to be administered before the race. The

program shall also indicate if it is the first, second, or third or subsequent time that a horse is racing with lasix, or if the horse has previously raced with lasix and the present race is the first race for the horse without lasix following its use.

20. To take any other action as may be reasonable or appropriate to enforce this chapter and the commission rules.

89 Acts, ch 231, §32 HF 490  
Subsection 8 amended

### **99D.11 Pari-mutuel wagering—televising races—minors prohibited.**

1. Except as permitted in this section, the licensee shall permit no form of wagering on the results of the races.

2. Licensees shall only permit the pari-mutuel or certificate method of wagering as defined in this section.

3. The licensee may receive wagers of money only from a person present in a licensed racing enclosure on a horse or dog in the race selected by the person making the wager to finish first in the race. The person wagering shall acquire an interest in the total money wagered on all horses or dogs in the race as first winners in proportion to the amount of money wagered by the person.

4. The licensee shall issue to each person wagering a certificate on which shall be shown the number of the race, the amount wagered, and the number or name of the horse or dog selected as first winner.

5. As each race is run the licensee shall deduct sixteen percent from the total sum wagered on all horses or dogs as first winners. The balance, after deducting breakage, shall be paid to the holders of certificates on the winning horse or dog in the proportion that the amount wagered by each certificate holder bears to the total amount wagered on all horses or dogs in the race as first winners. The licensee shall likewise receive wagers on horses or dogs selected to run second, third, or both, or in combinations the commission may authorize. The method, procedure, and the authority and right of the licensee, as well as the deduction allowed to the licensee, shall be as specified with respect to wagers upon horses or dogs selected to run first. However, the commission may authorize the licensee to deduct a higher percent of the total sum wagered not to exceed twenty percent on multiple or exotic wagering involving more than one horse or dog.

6. *a.* All wagering shall be conducted within the racetrack enclosure where the licensed race is held, except as provided in paragraph “*b*”.

*b.* The commission may authorize the licensee to simultaneously telecast within the racetrack enclosure for purpose of pari-mutuel wagering a horse or dog race licensed by the racing authority of another state. It is the responsibility of each licensee to obtain the consent of appropriate racing officials in other states as required by the federal Interstate Horseracing Act of 1978, 15 U.S.C. §3001-3007, to televise races for the purpose of conducting pari-mutuel wagering. A licensee may also obtain the permission of a person licensed by the commission to conduct horse or dog races in this state to televise races conducted by that person for the purpose of conducting pari-mutuel racing. However, arrangements made by a licensee to televise any race for the purpose of conducting pari-mutuel wagering are subject to the approval of the commission, and the commission shall limit a licensee to ten races a calendar year which races are chosen by the commission and which are the same for all licensees approved by the commission to televise races for the purpose of conducting pari-mutuel wagering. The commission shall not authorize the simultaneous telecast or televising of and a licensee shall not simultaneously telecast or televise any horse or dog race for the purpose of conducting pari-mutuel wagering unless the simultaneous telecast or televising is done at the racetrack of the licensee on a day and during the time, when there is a horse or dog racing meet being held at the racetrack. For purposes

of the taxes imposed under this chapter, races televised by a licensee for purposes of pari-mutuel wagering shall be treated as if the races were held at the racetrack of the licensee.

7. A person under the age of eighteen years shall not make a pari-mutuel wager.

89 Acts, ch 216, §1 SF 220  
Subsection 6 amended

### 99D.12 Breakage.

A licensee shall deduct the breakage from the pari-mutuel pool which shall be distributed to the breeders of Iowa-foaled horses and Iowa-whelped dogs in the manner described in section 99D.22. The remainder of the breakage shall be distributed as follows:

1. In horse races the breakage shall be retained by the licensee to supplement purses for races restricted to Iowa-foaled horses or to supplement purses won by Iowa-foaled horses by finishing first, second, third, or fourth in any other race. The purse supplements will be paid in proportion to the purse structure of the race.

2. In dog races the breakage shall be distributed as follows:

a. Seventy-three percent shall be retained by the licensee to supplement purses for races won by Iowa-whelped dogs as provided in section 99D.22.

b. Twenty-five percent shall be retained by the licensee and shall be put into a stake race for Iowa-whelped dogs. All dogs racing in the stake race must have run in at least twelve races during the current racing season at the track sponsoring the stake race to qualify to participate.

c. Two percent shall be deposited by the commission into a special fund to be known as the dog racing promotion fund. The commission each year shall approve a nonprofit organization to use moneys in the fund for research, education, and marketing of dog racing in the state, including public relations, and other promotional techniques. The nonprofit organization shall not engage in political activity. It shall be a condition of the allocation of funds that any organization receiving funds shall not expend the funds on political activity or on any attempt to influence legislation.

89 Acts, ch 216, §2, 3 SF 220

Moneys in dog racing promotion fund payable for one year to Iowa greyhound association; 89 Acts, ch 216, §11 SF 220  
Subsection 2, paragraph a amended  
Subsection 2, NEW paragraph c

### 99D.13 Unclaimed winnings—appropriation.

1. Winnings provided in section 99D.11 not claimed by the person who placed the wager within sixty days of the close of the racing meet during which the wager was placed shall be forfeited.

2. Winnings from each racetrack forfeited under subsection 1 shall escheat to the state and to the extent appropriated by the general assembly shall be used by the department of agriculture and land stewardship to administer sections 99D.22 and 99D.27. The remainder shall be paid over to the commission to pay the cost of drug testing at the tracks. To the extent the remainder paid over to the commission, less the cost of drug testing, is from unclaimed winnings from harness racing meets, the remainder shall be used as provided in subsection 3. To the extent the remainder paid over to the commission, less the cost of drug testing, is from unclaimed winnings from tracks licensed for dog or horse races, the commission, at least quarterly, shall remit one-third of the amount to the treasurer of the city in which the racetrack is located, one-third of the amount to the treasurer of the county in which the racetrack is located, and one-third of the amount to the racetrack from which it was forfeited. If the racetrack is not located in a city, then one-third shall be deposited as provided in chapter 556. The amount

received by the racetrack under this subsection shall be used only for retiring the debt of the racetrack facilities and for capital improvements to the racetrack facilities.

3. One hundred twenty thousand dollars of winnings from wagers placed at harness racing meets forfeited under subsection 1 in a calendar year that escheat to the state and are paid over to the commission are appropriated to the racing commission for the fiscal year beginning in that calendar year to be used as follows:

a. Eighty percent of the amount appropriated shall be allocated to qualified harness racing tracks, to be used by the tracks to supplement the purses for those harness races in which only Iowa-bred or owned horses may run. However, beginning with the allocation of the appropriation made for the fiscal year beginning July 1, 1992, the races for which the purses are to be supplemented under this paragraph shall be those in which only Iowa-bred two-year and three-year olds may run. In addition, the races must be held under the control or jurisdiction of the Iowa state fair board, established under section 173.1, or of a society, as defined under section 174.1.

b. Twenty percent of the amount appropriated shall be allocated to qualified harness racing tracks, to be used by the tracks for maintenance of and improvements to the tracks. Races held at the tracks must be under the control or jurisdiction of the Iowa state fair board, established under section 173.1, or of a society, as defined under section 174.1.

c. For purposes of this subsection, "*qualified harness racing track*" means a harness racing track that has either held at least one harness race meet between July 1, 1985, and July 1, 1989, or after July 1, 1989, has applied to and been approved by the racing commission for the allocation of funds under this subsection. The racing commission shall approve an application if the harness racing track has held at least one harness race meet during the year preceding the year for which the track seeks funds under this subsection.

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30 of the fiscal year for which the funds were appropriated shall not revert but shall be available for expenditure for the following fiscal year for the purposes of this subsection.

89 Acts, ch 216, §4, 5 SF 220  
 Subsection 2 stricken and rewritten  
 NEW subsection 3

#### **99D.14 Racing meets—tax—fees—tax exemption.**

1. A licensee under section 99D.9 shall pay the tax imposed by section 99D.15.

2. A licensee shall also pay to the commission the sum of fifty cents for each person entering the grounds or enclosure of the licensee upon a ticket of admission.

a. If tickets are issued which are good for more than one day, the sum of fifty cents shall be paid for each person using the ticket on each day that the ticket is used.

b. If free passes or complimentary admission tickets are issued, the licensee shall pay the same tax upon these passes or complimentary tickets as if they were sold at the regular and usual admission rate.

c. However, the licensee may issue tax-free passes to actual and necessary officials and employees of the licensee or other persons actually working at the racetrack.

d. The issuance of tax-free passes is subject to the rules of the commission, and a list of all persons to whom the tax-free passes are issued shall be filed with the commission.

3. The licensee shall also pay to the commission a licensee fee of two hundred dollars for each racing day of each horse-race or dog-race meeting for which a license has been issued.

4. No other license tax, permit tax, occupation tax, or racing fee, shall be levied, assessed, or collected from a licensee by the state or by a political subdivision, except as provided in this chapter.

5. No other excise tax shall be levied, assessed, or collected from the licensee on horse racing, dog racing, pari-mutuel wagering or admission charges by the state or by a political subdivision, except as provided in this chapter.

6. Any property used in the operation of a racetrack which is not exempt from property tax on July 1, 1989, or which becomes taxable property as a result of a court decision or change of ownership, or the construction of a new track that is not otherwise exempt shall be exempt from property taxation for three years beginning January 1 of the 1989 assessment year or beginning January 1 of the assessment year in which the property first becomes taxable as a result of a court decision or change in ownership, or the construction of a new track that is not otherwise exempt, whichever is applicable. During the last assessment year for which the property is exempt, the county board of supervisors shall present the question of the extension for an additional ten years of the tax exemption at a regular state election or a special election. If a majority of those voting on the question favor the tax exemption of the property, the property shall be exempt for an additional ten years. The exemption may be extended for additional ten-year periods in the same manner as was done for the first ten-year period.

89 Acts, ch 216, §6 SF 220  
NEW subsection 6

#### **99D.15 Pari-mutuel wagering taxes—rate—credit.**

1. A tax of six percent is imposed on the gross sum wagered by the pari-mutuel method at each horse race meeting. The tax imposed by this subsection shall be paid by the licensee to the treasurer of state within ten days after the close of each horse race meeting and shall be distributed as follows:

a. If the racetrack is located in a city, five percent of the gross sum wagered shall be deposited in the general fund of the state. One-half of one percent of the gross sum wagered shall be remitted to the treasurer of the city in which the racetrack is located and shall be deposited in the general fund of the city. The remaining one-half of one percent of the gross sum wagered shall be remitted to the treasurer of the county in which the racetrack is located and shall be deposited in the general fund of the county.

b. If the racetrack is located in an unincorporated part of a county, five and one-half percent of the gross sum wagered shall be deposited in the general fund of the state. The remaining one-half of one percent of the gross sum wagered shall be remitted to the treasurer of the county in which the racetrack is located and shall be deposited in the general fund of the county.

2. A tax credit of up to five percent of the gross sum wagered per year shall be granted to licensees licensed for horse races and paid into a special fund for the purpose of retiring the annual debt on the cost of construction of the licensed facility. However, the tax credit is equal to six percent of the gross sum wagered in a year when the gross sum wagered is less than ninety million dollars. Any portion of the credit not used in a particular year shall be retained by the treasurer of state. A tax credit shall first be assessed against any share going to a city, then to the share going to a county, and then to the share going to the state.

3. a. A tax is imposed on the gross sum wagered by the pari-mutuel method at each track licensed for dog races. The tax imposed by this subsection shall be paid by the licensee to the treasurer of state within ten days after the close of the track's racing season. The rate of tax on each track is as follows:

(1) Six percent, if the gross sum wagered in the racing season is fifty-five million dollars or more.

(2) Five percent, if the gross sum wagered in the racing season is thirty million dollars or more but less than fifty-five million dollars.

(3) Four percent, if the gross sum wagered in the racing season is less than thirty million dollars.

b. The tax revenue shall be distributed as follows:

(1) If the racetrack is located in a city, one-half of one percent of the gross sum wagered shall be remitted to the treasurer of the city in which the racetrack is located and shall be deposited in the general fund of the city. One-half of one percent of the gross sum wagered shall be remitted to the treasurer of the county in which the racetrack is located and shall be deposited in the general fund of the county. The remaining amount shall be deposited in the general fund of the state.

(2) If the racetrack is located in an unincorporated part of a county, one-half of one percent of the gross sum wagered shall be remitted to the treasurer of the county in which the racetrack is located and shall be deposited in the general fund of the county. The remaining amount shall be deposited in the general fund of the state.

c. If the rate of tax imposed under paragraph "a" is five percent or four percent, a track shall set aside for retiring the debt of the racetrack facilities or for capital improvement to the racetrack facilities the following amount:

(1) If the rate of tax paid by the track is five percent, one percent of the gross sum wagered in the racing season shall be set aside.

(2) If the rate of tax paid by the track is four percent, two percent of the gross sum wagered in the racing season shall be set aside.

89 Acts, ch 216, §7-9 SF 220

New subsection 3 applies to tracks licensed for dog races whose racing season ends on or after January 1, 1989; licensees affected by new subsection 3 are entitled to a refund of excess taxes paid under this section if refund claim is filed with revenue and finance department by July 1, 1990; 89 Acts, ch 216, §12, 13 SF 220

Subsection 1, unnumbered paragraph 1 amended

Subsection 2 amended

NEW subsection 3

### **99D.27 Racing dog adoption program.**

1. The department of agriculture and land stewardship shall oversee a program to adopt dogs eligible to race under this chapter. The department shall solicit applications from nonprofit organizations to carry out the program. The department shall select one or more organizations from each track to implement the program and enter into a contract with the organization selected.

Funds appropriated for the program shall be used for the administrative costs of the department to administer and oversee the program and to compensate the contracted organization for operating the program. In making the selection, the department shall assess the ability of the organization to carry out the objectives of the program. The department shall adopt rules relating to the operation of the program and oversight of the contracted organization.

2. A contracted organization selected under subsection 1 shall, to the extent funding and space are available, identify dogs that are potential candidates for adoption. The contracting organization shall evaluate dogs referred to it under the program to ensure that all of the following conditions are met:

a. The dog is of a breed eligible for racing under this chapter.

b. The dog has a disposition compatible as a pet residing within a household.

c. The dog is free of disease or disability requiring extensive medical treatment.

d. The dog has either raced at one of the tracks licensed under this chapter or is owned by a resident of Iowa.

3. After determining that a dog is eligible to be placed for adoption under this program, the contracted organization shall attempt to place the dog in a home suitable for the dog. If a suitable home is located, the organization shall arrange

for ownership of the dog to be transferred from the owner of the dog to the person who is adopting the dog. A dog shall not be transferred to a person for purposes related to racing, breeding, hunting, laboratory research, or scientific experimentation. The organization shall transfer information relating to the dog to the new owner. A dog eligible to race under this chapter shall not be given away, except through a contracted organization.

4. The contracting organization may destroy a dog if the dog becomes seriously diseased or disabled or the dog has not been transferred to a new owner within a period of time established by the department. The contracting organization shall destroy a dog only by use of euthanasia as defined in section 162.2. The department shall maintain a list of all dogs that have been destroyed.

5. Before transferring ownership of a dog to a new owner, the contracting organization shall do both of the following:

- a. Ensure that the dog is sterilized according to accepted veterinary procedures.
- b. Keep the dog in a sound and healthy condition, including providing the dog with necessary vaccinations.

6. The contracting organization may charge the adopting person the necessary expenses actually incurred in having the dog sterilized, vaccinated, or treated.

7. The department shall periodically inspect the operations and records of each contracting organization to ensure compliance with this section and to ensure a facility operated by or for the contracting organization under this program is complying with chapter 162 and rules adopted pursuant to that chapter. The department may suspend or revoke the contracting organization's participation in the program if the department finds the organization is not complying with the requirements of this section or rules adopted by the department.

8. The state, state personnel, the contracting organization, and its personnel are not liable for any claim resulting from the implementation of this program.

89 Acts, ch 216, §10 SF 220  
NEW section

## CHAPTER 99E

### IOWA LOTTERY ACT

#### **99E.18 Prohibited sales of tickets or shares—forgery—penalties.**

1. A ticket or share shall not be sold at a price greater than that fixed by the board and the commissioner and a sale shall not be made other than by a licensee or an employee of the licensee who is authorized by the licensee to sell tickets or shares. A person who violates a provision of this subsection is guilty of a simple misdemeanor.

2. A ticket or share shall not be sold to a person who has not reached the age of eighteen. This does not prohibit the lawful purchase of a ticket or share for the purpose of making a gift to a person who has not reached the age of eighteen. A licensee or a licensee's employee who knowingly sells or offers to sell a lottery ticket or share to a person who has not reached the age of eighteen is guilty of a simple misdemeanor. In addition the license of a licensee shall be suspended. A prize won by a person who has not reached the age of eighteen but who purchases a winning ticket or share in violation of this subsection shall be forfeited.

3. A ticket or share shall not be purchased by and a prize shall not be paid to the commissioner, a board member or employee of the lottery division, or to a spouse, child, stepchild, brother, brother-in-law, stepbrother, sister, sister-in-law, stepsister, parent, parent-in-law, or stepparent residing as a member of the same household in the principal residence of the commissioner, a board member, or an employee. A ticket or share purchased in violation of this subsection is void.

4. A person who, with intent to defraud, falsely makes, alters, forges, utters, passes, or counterfeits a lottery ticket or share or attempts to falsely make, alter, forge, utter, pass, or counterfeit a lottery ticket or share is guilty of a class "D" felony.

89 Acts, ch 83, §22 SF 112  
Subsection 3 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, provide comprehensive health benefits, 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 summer institute programs to upgrade the skills of Iowa teachers. A summer institute program shall consist of an intensive immersion of at least eight weeks' duration in the subject area of the program except that a summer institute program that assists teachers to use technology in the classroom may have a duration of three weeks. In determining programs to be funded, preference shall be given to programs that will allow teachers to gain endorsements in other subject areas, or to add to their endorsements in mathematics, science, foreign languages, and other areas that the department of education has determined are areas in which a shortage of teachers currently exists or is predicted to occur.

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 based upon recommendations of the department of education. 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.

89 Acts, ch 304, §408 SF 538

Subsection 2, paragraph b, subparagraph (7) amended

**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 four million six hundred twenty-five thousand dollars and in the fiscal year beginning July 1, 1989 the first four million four hundred thirty-five thousand dollars to the jobs now capitals account.

b. For the fiscal years beginning July 1, 1986, July 1, 1987, July 1, 1988, and July 1, 1989, after the allotment in paragraph "a", ten million dollars, ten million dollars, four million six hundred fifty thousand dollars, and four million six hundred fifty thousand dollars respectively, 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, nineteen million eight thousand dollars, and twenty-eight million eight hundred four 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, seven million dollars, and seven million seven hundred twenty-one 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.

d. Notwithstanding paragraph "c", after the allotments have been made for the fiscal year beginning July 1, 1988, under paragraphs "a" and "b", the total excess is allotted to the surplus account.

2. a. 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:

- (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) 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.
- (7) 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.
- (8) 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.

(9) Notwithstanding any other provision, the moneys allocated to the community economic betterment account beginning July 1, 1988, are appropriated to the department of economic development to be used only for the purposes of providing financial assistance for small business gap financing, new business opportunities, new product and entrepreneurial development, and comprehensive management assistance in the amounts, or so much thereof as may be necessary, as provided in section 99E.33. These purposes may be accomplished by providing the following types of assistance:

- (a) Principal buy-down program to reduce the principal of a business loan.
- (b) Interest buy-down program to reduce the interest of a business loan.
- (c) Loans to aid in economic development.
- (d) Grants to aid in 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.
- (e) Loan guarantees for business loans made by commercial lenders.
- (f) Equity-like investments.
- (g) Comprehensive management assistance. The conditions, criteria, and limitations specified in section 99E.31, subsection 2, apply to providing of moneys under this paragraph.

The department shall document the actual job creation and retention effects of all businesses receiving financial assistance from the account in the context of the businesses' employer contribution and payroll reports.

The department shall require businesses which receive assistance from the account to submit historical copies of the reports with the application for funds, require businesses to submit the reports after the award on a timely basis, and require businesses to estimate the expected job creation and retention effects for the twelve-month and twenty-four month period after the award in terms of the number of employees and total wages as displayed in the payroll reports. The department shall develop definitions for the terms "job creation" and "job retention" to measure and identify the actual number of permanent, full-time positions which the businesses actually created or retained and can be documented by comparison of the payroll reports during the twenty-four month period after the award.

b. The conditions, criteria, and limitations specified in section 99E.31, subsection 2, apply to the providing of moneys under this subsection. In addition to such conditions, criteria, and limitations, for applications submitted after July 1, 1988, the following factors and requirements shall be considered or applied:

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

(2) The economic impact to the state of the proposed project. In measuring the economic impact the department shall award more points for the following:

- (a) A project which has a greater consistency with the state strategic plan.\*
  - (b) A business with a greater percentage of sales out-of-state or of import substitution.
  - (c) A business with a higher proportion of in-state suppliers.
  - (d) A project which would provide greater diversification of the state economy.
  - (e) A business with fewer in-state competitors.
  - (f) A potential for future job growth.
  - (g) A project which is not a retail operation.
- (3) The quality of jobs to be provided. Jobs that have a higher wage scale, have a lower turnover rate, are full-time, or are career-type positions are considered higher in quality. Businesses that have wage scales substantially below that of existing Iowa businesses in that area should be rated as providing the lowest quality of jobs and should therefore be given the lowest ranking for providing such assistance.
- (4) If the business has a record of violations of the law over a period of time that tends to show a consistent pattern, the business shall be given the lowest ranking for providing assistance. The department shall make a good faith effort to compile this information.
- (5) If a business has, within three years of application for assistance, acquired or merged with an Iowa corporation or company, the business shall make a good faith effort to hire the workers of the merged or acquired company.
- (6) To be eligible for assistance a business shall provide for a preference for hiring residents of the state or the economic development area, except for out-of-state employees offered a transfer to Iowa or the economic development area.
- (7) All known required environmental permits must be granted and regulations met before moneys are released.

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 department of natural resources the sum of eight million dollars for the fiscal year beginning July 1, 1989, for deposit in an Iowa resources enhancement and protection fund and allocated pursuant to section 455A.19.

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. For the fiscal year beginning July 1, 1988, the amount appropriated is one million two hundred fifty thousand dollars. For the fiscal year beginning July 1, 1989, the amount appropriated is one million five hundred thousand dollars.

c. For the fiscal years beginning July 1, 1986, and July 1, 1987, to the department of cultural affairs, and for the fiscal years beginning July 1, 1988, and July 1, 1989, to the arts division of 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. For the fiscal year beginning July 1, 1988, the amount appropriated is six hundred fifty thousand dollars of which forty thousand dollars shall be allocated to the John L. Lewis commission for the John L. Lewis museum in Lucas, Iowa, seventy thousand dollars for the Iowa town square project, seventy thousand dollars for the artist endowment program, and twelve thousand dollars is to be directed to the secretary of state for the restoration and display of the Iowa state constitution. For the fiscal year beginning July 1, 1989, the amount appropriated is six hundred fifty 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. For the fiscal year beginning July 1, 1988, the amount appropriated is one million nine hundred eight thousand dollars. For the fiscal year beginning July 1, 1989, the amount appropriated is three million three hundred ninety-three 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. For the fiscal year beginning July 1, 1988, the amount appropriated is nine hundred thirty-five thousand dollars. Of the amount appropriated in the fiscal year beginning July 1, 1988, only, thirty thousand dollars shall be awarded to each of the fifteen regional coordinating councils for annual salaries, support, and maintenance of the satellite centers and up to one hundred fifty thousand dollars may be used for supplemental grants to the satellite centers. Criteria for awarding the grants include the performance of the satellite center and the need for the supplemental funding. The department shall award at least four supplemental grants, but in no case shall the maximum supplemental grant exceed fifteen thousand dollars. For the fiscal year beginning July 1, 1989, the amount appropriated is one million five hundred forty-five thousand dollars. Of the amount appropriated for the fiscal year beginning July 1, 1989, the department may employ three full-time equivalent positions for community outreach programs.

(2) Federal procurement offices, one hundred thousand dollars. For the fiscal year beginning July 1, 1988, the amount appropriated is one hundred thousand dollars. For the fiscal year beginning July 1, 1989, the amount appropriated is eighty thousand dollars.

(3) Iowa main street program, two hundred seventy-five thousand dollars. For the fiscal year beginning July 1, 1988, the amount appropriated is three hundred ninety-three thousand dollars. For the fiscal year beginning July 1, 1989, the amount appropriated is three hundred forty-three 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. For the fiscal year beginning July 1, 1988, no amount is appropriated. For the fiscal year beginning July 1, 1989, the amount appropriated is one hundred thousand dollars.

(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 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 or college is required to match the state's grant on a dollar-for-dollar basis. For the fiscal year beginning July 1, 1988, the amount appropriated is two hundred fifty thousand dollars. For the fiscal year beginning July 1, 1989, the amount appropriated is two hundred fifty thousand dollars.

(6) Rural incubators or technical assistance centers, one hundred fifty thousand dollars is appropriated for the fiscal year beginning July 1, 1988. The funds

shall be used for incubators or technical assistance centers located in communities with a population of less than ten thousand. 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 or center'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 or center is succeeding in becoming self-sufficient. The local community, university, or college is required to provide a twenty-five percent match of the state's grant. For the fiscal year beginning July 1, 1989, the amount appropriated is six hundred thousand dollars.

(7) For rural development programs, the sum of eighty thousand dollars is appropriated for the fiscal year beginning July 1, 1988. For the fiscal year beginning July 1, 1989, the amount appropriated is one hundred seventy-five thousand dollars.

(8) For council of governments assistance, the sum of three hundred thousand dollars is appropriated for the fiscal year beginning July 1, 1989. The funds shall be used to provide technical assistance to the political subdivisions of the state and to coordinate the delivery of local services of the council of governments.

*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, eight hundred thousand dollars for purposes of administration of the Iowa conservation corps, established in section 15.225. Of the amount appropriated for the fiscal year beginning July 1, 1988, one hundred thousand dollars shall be used for minority youth employment. Moneys not used for minority youth employment are available for use for the purposes of the Iowa conservation corps.

*h.* For the fiscal years beginning July 1, 1987 and July 1, 1988, to the advance account of the area school job training fund established in section 280C.6, one million dollars and seven hundred fifty thousand dollars, respectively. If 1988 Iowa Acts, chapter 1131, is enacted, the amount appropriated for the fiscal year beginning July 1, 1988, shall be to the revolving loan account of the area school job training fund.

*i.* For the fiscal year beginning July 1, 1987, 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. For the fiscal year beginning July 1, 1988, the amount appropriated is one hundred fifty thousand dollars. For the fiscal year beginning July 1, 1989, the amount appropriated is four hundred fifty thousand dollars which is to be used for funding of existing partnerships or for starting new ones.

*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.

*k.* For the fiscal year beginning July 1, 1988, there is appropriated to the department of economic development for labor management councils the sum of one hundred thousand dollars. For the fiscal year beginning July 1, 1989, there is

appropriated to the department of economic development for labor management councils the sum of two hundred thousand dollars.

*l.* For the fiscal years beginning July 1, 1988, and July 1, 1989, to the Iowa department of economic development the sum of seven hundred thousand dollars and seven hundred thousand dollars, respectively, for the establishment of welcome centers as provided in sections 15.271 and 15.272. The funds appropriated shall be used for implementation of the recommendations of the statewide long-range plan for developing and operating welcome centers through the state. Of the amount appropriated for the fiscal year beginning July 1, 1989, twenty-five thousand dollars, or so much as is necessary, is appropriated to the department of agriculture and land stewardship to provide a grant to the heartland heritage center project for the development of living history farms near Des Moines. As a condition of the grant, the department of agriculture and land stewardship shall have representation on all boards dealing with the planning, development, design, and administration of the living history farms development.

*m.* (1) For the fiscal years beginning July 1, 1988, and July 1, 1989, to the department of agriculture and land stewardship the sum of one hundred thousand dollars and two hundred fifty thousand dollars, respectively, to fund pilot lamb and wool management education projects approved by the department at area schools selected as project sites. The selection of an area school as a project site shall be based upon the evaluation and recommendations of an advisory committee created by the department and composed of persons actively engaged in lamb and wool production, persons representing the agricultural experiment station of the Iowa state university of science and technology, and persons expert in postsecondary education. The committee shall conduct an evaluation of area schools applying to be selected as pilot project sites. The committee in formulating its recommendations shall assign a weight to and consider the following criteria:

- (a) The area school's relevant and available educational facilities.
- (b) The number of persons interested in beginning or expanding lamb and wool production in the area school's merged area.
- (c) The current number of sheep in the area school's merged area.
- (d) The increase in the number of sheep in the area school's merged area.
- (e) The creation or expansion of lamb and wool production facilities in the area school's merged area.
- (f) The size and number of lamb and wool producer groups in the area school's merged area, and the degree to which such groups promote lamb and wool production in the area.
- (g) The qualifications of the person selected by the area school to direct the project, and the qualifications of persons selected by the area school to instruct producers participating in the project.

The committee shall be staffed by employees of the department as appointed by the director of the department. The evaluation and recommendations shall be submitted to the director not later than December 30, 1988, or December 30, 1989, as applicable.

(2) An area school selected to be a pilot project site is entitled to regular disbursements of funds by the department to establish the project, and for salaries, support, maintenance, and other operational purposes according to a schedule which shall be established by the department. An area school shall not have less than thirty producers participating in the project, on or after December 30, 1990, or December 30, 1991, as applicable. If after that time, less than thirty producers participate in a project when the department is disbursing scheduled funds to the area school, the amount of funds to the school shall be reduced proportionately according to the number of producers participating in the project. The amount withheld shall be added equally to the amount disbursed to area schools having thirty or more producers participating in their respective projects.

Only producers are eligible to participate in a project. The department may establish additional requirements for participation in the project, including a fee which shall be charged for producers participating in the project. A producer shall be charged the fee notwithstanding any other fee paid to the area school.

(3) For purposes of the projects, "producer" means a person actively engaged or seeking to become actively engaged in lamb or wool production.

n. For the fiscal year beginning July 1, 1988, the sum of nine million three hundred thousand dollars as follows:

(1) Four million six hundred fifty thousand dollars to the Iowa finance authority for the revolving fund for the community and rural development loan program established under 1988 Iowa Acts, chapter 1217.

(2) Four million six hundred fifty thousand dollars to the business development finance corporation assistance fund established under 1988 Iowa Acts, chapter 1207.

(3) Up to one million dollars of the moneys allocated under subparagraph (1) and up to three million dollars of the moneys allocated under subparagraph (2) which are not used or dedicated may be transferred to and used for purposes of the community economic betterment account, as determined by the department of economic development with one-half of the amount to be transferred on October 1, 1988, and one-half of the amount to be transferred on January 15, 1989. For the fiscal year beginning July 1, 1989, the sum of two million six hundred fifty thousand dollars is appropriated to the business development finance corporation assistance fund established under section 28.148.

a. For the fiscal year beginning July 1, 1988, to the department of economic development the sum of fifty thousand dollars for a local economic development pilot project for an area encompassing the cities and rural areas making up the area community commonwealth where the cities are represented on the board of directors of a nonprofit corporation set up for the purpose of aiding in the economic development of the area. In order for the area to receive moneys under this paragraph, the area shall be formed under an agreement entered into pursuant to chapter 28E for the sole purpose of providing for economic development projects for the area provided the agreement identifies an entity to receive the funds under this paragraph and all parties to the agreement shall be located within the same regional economic delivery area created pursuant to section 28.101. The moneys available to the chapter 28E area shall be used only for economic development initiatives as defined in section 99E.10, subsection 2. However, as used in this paragraph, economic development initiatives do not include the employment of professional staff or consultants. The chapter 28E area shall file an economic development plan with the department of economic development before application is made to receive funds under this paragraph. The area receiving funds under this paragraph shall submit an annual financial report within sixty days following the close of its fiscal year to the regional coordinating council created pursuant to section 28.101 of the region in which the area is located.

p. For the fiscal year beginning July 1, 1988, to the division of soil conservation within the department of agriculture and land stewardship for deposit in the water protection fund created in 1988 Iowa Acts, chapter 1189, section 5, the sum of five hundred thousand dollars for purposes of the fund.

q. For the fiscal years beginning July 1, 1988, and July 1, 1989, to the department of education the sum of seven hundred fifty thousand dollars and seven hundred fifty thousand dollars, respectively, for the purposes and under the conditions specified in section 99E.31, subsection 5, paragraph "c".

r. For the fiscal year beginning July 1, 1989, to the Iowa state university of science and technology for funding the small business development centers the sum of one million three hundred thousand dollars.

s. For the fiscal year beginning July 1, 1989, to the Iowa finance authority, the sum of one million three hundred ninety-five thousand dollars for the housing trust fund as specified in section 220.100 to be used for purposes of section 220.100, subsection 2, paragraphs "b" and "c".

t. For the fiscal year beginning July 1, 1989, to the Iowa finance authority, the sum of one hundred thousand dollars for the operations, construction, or repairs of homeless assistance shelters.

u. (1) For the fiscal year beginning July 1, 1989, to the Iowa finance authority, the sum of two million dollars for the housing assistance program to provide mortgage and finance assistance to individuals for the purchase or acquisition of homes. Of this amount one hundred thousand dollars shall be used to finance the purchase or acquisition, in communities with a population of less than five thousand, of modular homes, as defined in section 135D.1, and manufactured homes as defined in 42 U.S.C. §5403.

(2) Funds provided under subparagraph (1) shall not be restricted to first-time home buyers but shall be for lower income and very low income families as defined in section 220.1. The assistance provided shall include at least one of the following kinds and may include others whether listed or not:

(a) Closing costs assistance.

(b) Down payment assistance.

(c) Home maintenance and repair assistance.

(d) Loan processing assistance through a loan endorser review contractor who would act on behalf of the authority in assisting lenders in processing loans that will qualify for government insurance or guarantee or for financing under the authority's mortgage revenue bond program.

(e) Mortgage insurance program.

Not more than fifty percent of the assistance provided by the authority shall be provided under subparagraph subdivisions (d) and (e).

(3) Assistance provided under subparagraph (1) shall be limited to mortgages under thirty-five thousand dollars, except in those areas of the state where the median price of homes exceeds the state average. In providing the assistance, the authority shall require substantial seller participation of not less than two percent of the mortgage amount, which participation includes, but is not limited to, home ownership maintenance funding, down payment assistance, payment of closing costs, or rehabilitation costs.

v. For the fiscal year beginning July 1, 1989, to the arts division of the department of cultural affairs, the sum of one hundred twenty thousand dollars for the town square program.

w. For the fiscal year beginning July 1, 1989, to the arts division of the department of cultural affairs, the sum of one hundred thousand dollars for the artists endowment program.

x. For the fiscal year beginning July 1, 1989, to the department of cultural affairs, the sum of two hundred seventy thousand dollars for the preservation, exhibition, or development of historic resources by the department.

y. For the fiscal year beginning July 1, 1989, to the department of economic development for the sister state program the sum of eighty thousand dollars. Funds appropriated for the sister state program shall be matched on a dollar-for-dollar basis by private sources. In-kind expenditures from the private sector may be considered as a portion of the dollar-for-dollar match. The department shall secure the necessary private participation from groups and organizations most appropriate for this program.

z. For the fiscal year beginning July 1, 1989, to the department of economic development the sum of two hundred ninety-six thousand dollars for a rural main street program for communities with a population under five thousand.

*aa.* For the fiscal year beginning July 1, 1989, to the department of economic development, the sum of four hundred thousand dollars for a rural enterprise fund for seed money for local community development organizations established for an area for the purpose of providing for economic and business development projects. The availability of the seed money, and the type of projects are similar to those envisioned in paragraph "o" of this subsection.

*ab.* For the fiscal year beginning July 1, 1989, the sum of two million dollars to the department of economic development to establish a retraining program for existing Iowa businesses and employees to upgrade and modernize the skills of the employees.

*ac.* To the revolving loan account of the area school job training fund established under section 280C.6, the sum of one million dollars for the fiscal year beginning July 1, 1989.

*ad.* For the fiscal year beginning July 1, 1989, to the department of economic development, the sum of one hundred fifty thousand dollars for a productivity enhancement program which will focus on transferring state-of-the-art manufacturing techniques to rural manufacturers.

*ae.* To the department of human services the sum of two hundred fifty thousand dollars, or so much thereof as is necessary, for grants of financial aid, made pursuant to section 232.142, subsection 3, for purposes of establishing, improving, operating, and maintaining approved county and multicounty juvenile detention homes. The department shall encourage the recipients of the grants to serve the needs of juveniles in multicounty areas.

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 years beginning July 1, 1987, July 1, 1988, and July 1, 1989, 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".

(1) For the fiscal year beginning July 1, 1986, the amount appropriated is ten million seven hundred fifty thousand dollars.

(2) 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.

(3) For the fiscal year beginning July 1, 1988, the amount appropriated is seven million dollars of which two hundred fifty thousand dollars shall be allocated to the University of Northern Iowa for the decision-making science institute; one hundred thousand dollars shall be allocated to the department of economic development for an economic development training program at the school of business at the University of Northern Iowa which shall use these funds in consultation with the department, the university, and the Iowa professional developers; forty thousand dollars shall be allocated to the state library within the department of cultural affairs to establish a patent depository library for the

purpose of making university patents accessible to the public and private sectors by purchasing the twenty-year backfile of patents and to train existing staff to work with users of the library; and three hundred sixty thousand dollars shall be allocated and used to establish a university and private industry research and development consortium at each of the state board of regents universities under chapter 262B. Of the three hundred sixty thousand dollars, one hundred twenty thousand dollars is allocated to each of the consortiums with eighty-five thousand dollars being appropriated to the department of economic development for providing staff and support to the marketing for the consortiums and thirty-five thousand dollars is allocated to each of the offices of vice president for research at the three board of regents institutions. Of the money allocated under this paragraph to the Iowa State University of science and technology for the fiscal year beginning July 1, 1988, two hundred thousand dollars shall be used to support collaborative research with the United States department of agriculture to improve reproductive performance and disease resistance in swine. After the first five million dollars appropriated for the fiscal year beginning July 1, 1988, has been allocated, the next one million dollars shall be allocated for proposals described in section 99E.31, subsection 4, paragraph "a", subparagraph (1) and the next one million dollars shall be allocated for applied research projects described in section 99E.31, subsection 4, paragraph "a", subparagraph (3) of which one hundred fifty thousand dollars shall be used for the water resource research institute under paragraph "e". The department may use any unexpended funds from the appropriation made under this paragraph for the fiscal year beginning July 1, 1987, as a prepayment of the allocations made for the fiscal year beginning July 1, 1988, for the decision-making science institute and the economic development leadership program, which prepayment shall be repaid as the fiscal year beginning July 1, 1988, allocation to such institute or program becomes available.

(4) For the fiscal year beginning July 1, 1989, the amount appropriated is six million four hundred thousand dollars. Of the amount appropriated for the fiscal year beginning July 1, 1989, forty thousand dollars shall be allocated to the state library within the department of cultural affairs for purposes of the patent depository library and three hundred thousand dollars shall be allocated and used to operate the university and private industry research and development consortium at each of the state board of regents universities established under chapter 262B. Of the three hundred thousand dollars, one hundred thousand dollars is allocated to each of the consortiums. The department of economic development and the consortiums shall coordinate activities relating to purposes of chapter 262B.\* Of the amount appropriated in this subparagraph, five hundred thousand dollars is allocated to the University of Northern Iowa for the decision-making science institute; one hundred thousand dollars is allocated to the department of economic development for an economic development training program at the school of business at the University of Northern Iowa which shall use these funds in consultation with the department, the university, and the professional developers of Iowa; one hundred thousand dollars is allocated to the decision-making science institute for the emerging business opportunities analysis; six hundred fifty thousand dollars is allocated to the international network on trade fund of the INTERNET foundation, established in chapter 18B, which shall transfer four hundred thousand dollars of its allocation to the Wallace technology transfer foundation of Iowa established in section 28.152; and three hundred thousand dollars, to be allocated equally, for support of the Iowa technology innovation centers at the University of Iowa and the Iowa State University of science and technology and the applied technology program at the University of Northern Iowa.

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 years beginning July 1, 1987, and July 1, 1988, no amount is appropriated. However, the funds transferred under paragraph "a" are available for use under this paragraph for the fiscal years beginning July 1, 1987, and July 1, 1988. For the fiscal years beginning July 1, 1988, and July 1, 1989, no amount is appropriated.

d. For the fiscal year beginning July 1, 1987 only to the Iowa peace institute, the sum of two hundred fifty thousand dollars 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. For the fiscal year beginning July 1, 1988, the unobligated moneys left in the Iowa plan fund as a result of the appropriation made for the fiscal year beginning July 1, 1985, pursuant to section 99E.31, subsection 5, paragraphs "e" and "g", are appropriated for use under this paragraph. However, if the amount appropriated exceeds two hundred fifty thousand dollars the excess shall be reallocated under the account.

e. For the fiscal years beginning July 1, 1987 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.

f. For the fiscal year beginning July 1, 1989, to the department of economic development, the sum of two hundred twenty-one thousand dollars for the University of Iowa and two hundred fifty thousand dollars for the Iowa State University of science and technology for the operation and maintenance of the university related research parks.

g. For the fiscal year beginning July 1, 1989, to the Iowa cooperative extension service in agriculture and home economics at the Iowa State University of science and technology, the sum of three hundred thousand dollars to begin a three-year intensive effort of technology transfer for the livestock industry.

h. For the fiscal year beginning July 1, 1989, to the department of economic development the sum of five hundred thousand dollars for the energy-related activities of the amorphous semiconductor project at Iowa State University of science and technology.

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, and July 1, 1987, 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 commissioner 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.

For the fiscal year beginning July 1, 1988, there is appropriated to the department of public safety the sum of two hundred fifty thousand dollars for the automated fingerprint identification system. For the fiscal year beginning July 1, 1989, there is appropriated to the department of public safety the sum of four hundred ten thousand dollars for four remote automated fingerprint identification system (AFIS) terminals.

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, July 1, 1987, and July 1, 1988, to the Iowa State University of science and technology for funding for the small business development centers the sum of seven hundred thousand dollars, eight hundred twenty-five 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. Welcome centers and rural centers that have received moneys from the department under this paragraph are required to promote the region in which they are located and the state as a whole.

*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, and July 1, 1988, 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. Notwithstanding the amount otherwise appropriated and the purpose for which appropriated under this paragraph, for the fiscal year beginning July 1, 1988, there is appropriated one million five hundred thousand dollars to the department of general services for construction, equipment, renovation, and other costs associated with buildings in the capitol complex, of which two hundred thousand dollars is allocated for Terrace Hill, one hundred twenty-five thousand is allocated for planning and construction of a parking garage, five hundred thousand is allocated for the planning for legislative office space, and up to ten thousand dollars shall be used for the purchase of POW/MIA flags to be flown on all public buildings of public bodies that apply for the flags.

*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.

*m.* There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1988, to the department of public defense the sum of fifty thousand dollars for the planning for the construction of armories.

*n.* There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1988, to the Iowa department of economic development the sum of seven hundred ninety-three thousand dollars for contracting exclusively for advertising for in-state and out-of-state tourism, tourism marketing, and tourism promotion programs for electronic media and printed materials.

The department shall develop public-private partnerships with Iowa businesses in the tourism industry, Iowa tour groups, Iowa tourism organizations, and political subdivisions in this state to assist in the development of advertising efforts and to the fullest extent possible, match on a dollar-for-dollar basis, contributions from other sources to fund the advertising contracts.

The amount appropriated under this lettered paragraph is in addition to any amounts appropriated under 1988 Iowa Acts, chapter 1273.

*a.* There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1988, to the Iowa

department of economic development the sum of one million two hundred seven thousand dollars for contracting exclusively for marketing and advertising contracts for out-of-state national marketing programs for electronic media and printed materials.

The department shall develop public-private partnerships with Iowa businesses, Iowa business organizations, Iowa chambers of commerce, and political subdivisions in this state, to assist in the development of the marketing efforts and to the fullest extent possible, match on a dollar-for-dollar basis, contributions from other sources to fund the marketing contracts.

The amount appropriated under this lettered paragraph is in addition to any amounts appropriated under 1988 Iowa Acts, chapter 1273.

p. There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1989, to the Iowa state fair board the sum of four hundred thousand dollars to provide facilities to house booths, displays, and other promotional activities for local tourism groups and organizations.

q. There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1989, to the department of cultural affairs the sum of one million dollars to be deposited in the historical resource revolving fund to be used for the historical resource development program under section 303.16.

r. There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1989, to the American Gothic House trust account the sum of one hundred thousand dollars for the acquisition and maintenance of Gothic House in Eldon.

s. There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1989, to the Iowa department of public health the sum of two hundred fifty thousand dollars to finance research in the area of electromagnohydrodynamics ventricular assist devices of the Iowa center for applied sciences, a nonprofit corporation established under the laws of Iowa. The department of public health may enter into an agreement with the Iowa product development corporation to provide technical assistance and oversight for this project.

t. (1) There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1989, to a special fund to be created in the office of the treasurer of state the sum of one million five hundred thousand dollars to be used for the acquisition of emergency medical services equipment as provided in this paragraph.

(2) The moneys in the special fund created pursuant to subparagraph (1) shall be allocated to each county based upon the apportionment of funds as follows:

(a) Fifty percent of the funds is apportioned based upon the area of a county to the total area of all counties.

(b) Twenty-five percent of the funds is apportioned based upon the population of the county to the total population of all counties.

(c) Twenty-five percent of the funds is apportioned based upon the rural population of the county to the total rural population of all counties.

(3) Each county EMS association shall propose a plan for spending the county's allocation and submit the plan to the regional EMS council for its review and comment. The regional EMS council shall review the plan and shall approve, modify, or deny it. If a request is denied the county EMS association may submit a new proposal. Upon approval of the regional EMS council, the treasurer of state shall remit the amount approved to each county treasurer. Each county treasurer shall disburse the funds to the award recipients. Each one dollar awarded to a county shall require a one-dollar match by the county or EMS provider. The Iowa department of public health shall provide assistance to the regional EMS council

in reviewing the proposals and shall assist the office of the treasurer of state in implementing this paragraph.

(4) For purposes of this paragraph, unless the context otherwise requires:

(a) "Area", "county EMS association", "EMS provider", "regional EMS council", and "rural population" mean the same as defined in 641 IAC, ch. 130.

(b) "Emergency medical services equipment" means defibrillators, nondisposable essential ambulance equipment, as defined by the American college of surgeons, communications pagers, radios, and base repeaters. "Emergency medical services equipment" does not include ambulances, automotive parts, or buildings.

(5) Notwithstanding section 8.33 or any other provision of law, funds appropriated by this paragraph which are unobligated or unencumbered on June 30, 1989, shall not revert to any fund but shall remain in the special account until fully awarded to the appropriate counties.

u. There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1989, to the Iowa department of transportation the sum of one hundred twenty-five thousand dollars, with eighty percent of the appropriation being credited to the city of Ventura and twenty percent of the appropriation being credited to the city of Clear Lake, for the completion of the road improvement connecting East Lake drive and North Shore drive.

u. (1) There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1989, to the department of human rights the sum of five hundred thousand dollars for the community-based recreational and educational grant program.

(2) Of the amount appropriated under subparagraph (1), four hundred thousand dollars shall be used as follows:

(a) To provide state funds to encourage and supplement recreational and educational activities for low-income youth grades K-12 by filling existing gaps and permitting expansion in the current system of community-based recreational and educational programs; establishing a comprehensive network of services that are continuous and year-round that focus on recreation and personal development education for low-income youth grades K-12; and providing recreational/educational programs for youth from families with incomes no more than twenty percent above the state poverty level.

(b) To be eligible for state funds under this subparagraph the applicant must be a nonprofit organization whose mission includes providing services for low-income youth grades K-12; the activities must be those not currently offered by the organization, or if currently offered is demonstrably underfunded; and the activities must be free of charge to all youth who meet the income requirements. A nominal fee, at cost, may be assessed to youth who do not meet the stated income requirements. Grants will be awarded based on the organization's demonstrated ability to provide organized recreational or educational programs or a combination of both.

(c) Eligible activities include, but are not limited to, the following:

(i) Recreation: arts and crafts, such as pottery, sewing, painting; swimming teams; bowling leagues; tumbling/gymnastics; and volleyball, softball, basketball, and tennis.

(ii) Education: drama clubs; dance lessons/troupes; music lessons, such as piano, voice; computer literacy; cultural enrichment reading; creative writing; and employment skills.

(3) Of the amount appropriated under subparagraph (1), one hundred thousand dollars shall be used for exemplary social and community-organized projects whose services are primarily targeted to minority populations in the state.

*u.* There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1989, to the Terrace Hill commission the sum of fifty thousand dollars for landscaping, painting, equipment, repairs, renovations and furnishings at Terrace Hill.

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.

9. There is appropriated to the agencies named for the fiscal year beginning July 1, 1988, and ending June 30, 1989, the remaining moneys in the surplus account after repayment to the permanent school fund in accordance with section 280C.8, to be used for the purposes designated:

*a.* To the Iowa State University of science and technology for biodegradable plastics research, the sum of three hundred ninety-eight thousand dollars. As a condition, limitation, and qualification of the appropriation made in this paragraph, one-third of the funds appropriated in this paragraph shall be used for researching the health and environmental impacts of biodegradable plastics.

*b.* To the State University of Iowa for biodegradable plastics research, the sum of one hundred eighty-three thousand dollars.

*c.* To the University of Northern Iowa for polymer and elastomer recycling research, the sum of one hundred thirty-one thousand dollars.

*d.* To the department of agriculture and land stewardship for development of biodegradable plastics standards, the sum of seventy-five thousand dollars.

*e.* To the department of natural resources for the purposes of holding toxic waste cleanup days during the fall of 1989, the sum of four hundred thousand dollars.

To the extent practical, the department shall hold at least one of the toxic cleanup days in each state congressional district.

*f.* To the department of public safety or successor drug enforcement agency for promoting, equipping, and staffing a "Drug Tip Hotline", the sum of fifty thousand dollars.

Notwithstanding section 8.39, funds appropriated under this paragraph are not subject to transfer.

*g.* To the department of public safety for not more than the following full-time equivalent positions for the purpose of enforcing 1989 Iowa Acts, chapter 67: the sum of three hundred thousand dollars for sixteen FTEs.

*h.* To the state racing and gaming commission for not more than the following full-time equivalent positions for regulation activities required pursuant to 1989

Iowa Acts, chapter 67: the sum of one hundred thousand dollars for four and twenty-five hundredths FTEs.

89 Acts, ch 314, §1-8 HF 785

\*See §15.104(2)

Item vetoes applied to subsection 3, paragraph d, subparagraph (1); subsection 4, paragraph b, subparagraph (4); subsection 5, new paragraph u; and new subsection 9, paragraph d, subparagraph (2); 89 Acts, ch 314, §4, 5, 7, 8 HF 785

Item veto in subsection 4, paragraph b, subparagraph (4), left a portion of a sentence unamended, as follows: "... thousand dollars being appropriated to the department of economic development for providing staff and support to the marketing for the consortiums and thirty-five thousand dollars is allocated to each of the offices of vice president for research at the three board of regents institutions."

Allocation for drug enforcement training program for law enforcement officers for fiscal year beginning July 1, 1989; 89 Acts, ch 225, §6 HF 780

Subsection 1, paragraphs a and b amended

Subsection 1, NEW paragraph d

Subsection 2, paragraph a, subparagraph (9), unnumbered paragraph 1 amended

Subsection 3 amended

Subsection 4 amended

Subsection 5, paragraphs a, b and j amended

Subsection 5, NEW paragraphs p-w

NEW subsection 9

## CHAPTER 99F

### EXCURSION BOAT GAMBLING

No license to take effect before April 1, 1991; 89 Acts, ch 67, §18

#### 99F.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Adjusted gross receipts"* means the gross receipts less winnings paid to wagerers.
2. *"Applicant"* means any person applying for an occupational license or applying for a license to operate an excursion gambling boat, or the officers and members of the board of directors of a qualified sponsoring organization located in Iowa applying for a license to conduct gambling games on an excursion gambling boat.
3. *"Cheat"* means to alter the selection of criteria which determine the result of a gambling game or the amount or frequency of payment in a gambling game.
4. *"Commission"* means the state racing and gaming commission created under section 99D.5.
5. *"Distributor"* means a person who sells, markets, or otherwise distributes gambling games or implements of gambling which are usable in the lawful conduct of gambling games pursuant to this chapter, to a licensee authorized to conduct gambling games pursuant to this chapter.
6. *"Dock"* means the location where an excursion gambling boat moors for the purpose of embarking passengers for and disembarking passengers from a gambling excursion.
7. *"Excursion gambling boat"* means a self-propelled excursion boat on which lawful gambling is authorized and licensed as provided in this chapter.
8. *"Excursion season"* includes the months of April through October.
9. *"Gambling excursion"* means the time during which gambling games may be operated on an excursion gambling boat whether docked or during a cruise.
10. *"Gambling game"* means twenty-one, dice, slot machine, video game of chance or roulette wheel.
11. *"Gross receipts"* means the total sums wagered under this chapter.
12. *"Holder of occupational license"* means a person licensed by the commission to perform an occupation which the commission has identified as requiring a license to engage in excursion boat gambling in Iowa.
13. *"Licensee"* means any person licensed under section 99F.7.
14. *"Manufacturer"* means a person who designs, assembles, fabricates, produces, constructs, or who otherwise prepares a product or a component part of a

product of any implement of gambling usable in the lawful conduct of gambling games pursuant to this chapter.

15. "Off season" includes the months of November through March.

16. "Qualified sponsoring organization" means a person or association that can show to the satisfaction of the commission that the person or association is eligible for exemption from federal income taxation under 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 as defined in section 422.3.

89 Acts, ch 67, §1 SF 124  
NEW section

### 99F.2 Scope of provisions.

This chapter does not apply to the pari-mutuel system of wagering used or intended to be used in connection with the horse-race or dog-race meetings as authorized under chapter 99D, lottery or lotto games authorized under chapter 99E, or bingo or games of skill or chance authorized under chapter 99B.

89 Acts, ch 67, §2 SF 124  
NEW section

### 99F.3 Excursion boat gambling authorized.

The system of wagering on a gambling game as provided by this chapter is legal, when conducted on an excursion gambling boat at authorized locations by a licensee as provided in this chapter.

89 Acts, ch 67, §3 SF 124  
NEW section

### 99F.4 Powers.

The commission shall have full jurisdiction over and shall supervise all gambling operations governed by this chapter. The commission shall have the following powers and shall adopt rules pursuant to chapter 17A to implement this chapter:

1. To investigate applicants and determine the eligibility of applicants for a license and to select among competing applicants for a license the applicant which best serves the interests of the citizens of Iowa.

2. To license qualified sponsoring organizations, to license the operators of excursion gambling boats, to identify occupations within the excursion gambling boat operations which require licensing, and to adopt standards for licensing the occupations including establishing fees for the occupational licenses and licenses for qualified sponsoring organizations. The fees shall be paid to the commission and deposited in a special account of the general fund of the state. All revenue received by the commission from license fees and admission fees shall be deposited in the special account in the general fund of the state.

3. To adopt standards under which all excursion gambling boat operations shall be held and standards for the facilities within which the gambling operations are to be held. The commission may authorize the operation of gambling games on an excursion gambling boat which is also licensed to sell or serve alcoholic beverages, wine, or beer as defined in section 123.3.

4. To regulate the wagering structure for gambling excursions including providing a maximum wager of five dollars per hand or play and maximum loss of two hundred dollars per individual player per gambling excursion.

5. To enter the office, excursion gambling boat, facilities, or other places of business of a licensee to determine compliance with this chapter.

6. To investigate alleged violations of this chapter or the commission rules, orders, or final decisions and to take appropriate disciplinary action against a licensee or a holder of an occupational license for a violation, or institute appropriate legal action for enforcement, or both.

7. To require a licensee, an employee of a licensee or holder of an occupational license to remove a person violating a provision of this chapter or the commission rules, orders, or final orders, or other person deemed to be undesirable, from the excursion gambling boat facilities.

8. To require the removal of a licensee, an employee of a licensee, or a holder of an occupational license for a violation of this chapter or a commission rule or engaging in a fraudulent practice.

9. To require a licensee to file an annual balance sheet and profit and loss statement pertaining to the licensee's gambling activities in this state, together with a list of the stockholders or other persons having any beneficial interest in the gambling activities of each licensee.

10. To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, and other pertinent documents in accordance with chapter 17A, and to administer oaths and affirmations to the witnesses, when, in the judgment of the commission, it is necessary to enforce this chapter or the commission rules.

11. To keep accurate and complete records of its proceedings and to certify the records as may be appropriate.

12. To assess a fine and revoke or suspend licenses.

13. To take any other action as may be reasonable or appropriate to enforce this chapter and the commission rules.

14. To require all licensees of gambling game operations to utilize a cashless wagering system whereby all players' money is converted to tokens, electronic cards, or chips which only can be used for wagering on the excursion gambling boat.

15. To determine the payouts from the gambling games authorized under this chapter. In making the determination of payouts, the commission shall consider factors that provide gambling and entertainment opportunities which are beneficial to the gambling licensees and the general public.

16. To set the payout rate for all slot machines.

17. To define the duration of an excursion which shall be at least three hours during the excursion season. For the off season, the commission shall adopt rules limiting times of admission to excursion gambling boats consistent with maximum loss per player per gambling excursion specified in subsection 4.

18. To provide for the continuous videotaping of all gambling activities on an excursion boat. The videotaping shall be performed under guidelines set by rule of the division of criminal investigation and the rules may require that all or part of the original tapes be submitted to the division on a timely schedule.

19. To provide for adequate security aboard each excursion gambling boat.

20. To provide that gambling games shall be conducted only during the same hours when alcoholic beverages are lawfully sold or dispensed as provided in section 123.49.

21. To establish minimum charges for admission to excursion gambling boats and regulate the number of free admissions.

22. Drug testing, as permitted by section 730.5, shall be required periodically, not less than every sixty days, of persons employed as captains, pilots, or physical operators of excursion gambling boats under the provisions of this chapter.

89 Acts, ch 67, §4 SF 124; 89 Acts, ch 139, §1 SF 525

Report to General Assembly by April 1, 1990; no license to take effect before April 1, 1991; 89 Acts, ch 67, §18

NEW section

NEW subsections 16-22

### **99F.5 Licenses for conducting gambling games on an excursion boat and for boat operators—applications—fee.**

1. A qualified sponsoring organization may apply to the commission for a license to conduct gambling games on an excursion gambling boat as provided in this chapter. A person may apply to the commission for a license to operate an

excursion gambling boat. The application shall be filed with the administrator of the commission at least ninety days before the first day of the next excursion season as determined by the commission, shall identify the excursion gambling boat upon which gambling games will be authorized, shall specify the exact location where the excursion gambling boat will be docked, and shall be in a form and contain information as the commission prescribes.

2. The annual license fee to operate an excursion gambling boat shall be based on the passenger-carrying capacity including crew, for which the excursion gambling boat is registered. The annual fee shall be five dollars per person capacity.

89 Acts, ch 67, §5 SF 124  
NEW section

### **99F.6 Requirements of applicant—fee—penalty.**

1. A person shall not be issued a license to conduct gambling games on an excursion gambling boat or a license to operate an excursion gambling boat under this chapter, an occupational license, a distributor license, or a manufacturer license unless the person has completed and signed an application on the form prescribed and published by the commission. The application shall include the full name, residence, date of birth and other personal identifying information of the applicant that the commission deems necessary. The application shall also indicate whether the applicant has any of the following:

- a. A record of conviction of a felony.
- b. An addiction to alcohol or a controlled substance.
- c. A history of mental illness.

2. An applicant shall submit pictures, fingerprints, and descriptions of physical characteristics to the commission in the manner prescribed on the application forms.

3. The commission shall charge the applicant a fee set by the department of public safety, division of criminal investigation and bureau of identification, to defray the costs associated with the search and classification of fingerprints required in subsection 2 and background investigations conducted by agents of the division of criminal investigation. This fee is in addition to any other license fee charged by the commission.

4. Before a license is granted, the division of criminal investigation of the department of public safety shall conduct a thorough background investigation of the applicant for a license to operate a gambling game operation on an excursion gambling boat. The applicant shall provide information on a form as required by the division of criminal investigation. Before a qualified sponsoring organization is licensed to operate gambling games under this chapter, the qualified sponsoring organization shall certify that the receipts of all gambling games, less reasonable expenses, charges, taxes, fees, and deductions allowed under this chapter, will be distributed as winnings to players or participants or will be distributed for educational, civic, public, charitable, patriotic, or religious uses as defined in section 99B.7, subsection 3, paragraph "b". A qualified sponsoring organization shall not make a contribution to a candidate, political committee, candidate's committee, state statutory political committee, county statutory political committee, national political party, or fund-raising event as these terms are defined in section 56.2. The membership of the board of directors of a qualified sponsoring organization shall represent a broad interest of the communities.

5. Before a license is granted, an operator of an excursion gambling boat shall work with the department of economic development to promote tourism throughout Iowa. Tourism information from local civic and private persons may be submitted for dissemination.

6. A person who knowingly makes a false statement on the application is guilty of an aggravated misdemeanor.

7. For the purposes of this section, applicant includes each member of the board of directors of a qualified sponsoring organization.

8. *a.* The licensee or a holder of an occupational license shall consent to the search, without a warrant, by agents of the division of criminal investigation of the department of public safety or commission employees designated by the secretary of the commission, of the licensee's or holder's person, personal property, and effects, and premises which are located on the excursion gambling boat or adjacent facilities under control of the licensee, in order to inspect or investigate for violations of this chapter or rules adopted by the commission pursuant to this chapter. The department or commission may also obtain administrative search warrants under section 808.14.

*b.* However, this subsection shall not be construed to permit a warrantless inspection of living quarters or sleeping rooms on the riverboat if all of the following are true:

(1) The licensee has specifically identified those areas which are to be used as living quarters or sleeping rooms in writing to the commission.

(2) Gaming is not permitted in the living quarters or sleeping rooms, and devices, records, or other items relating to the licensee's gaming operations are not stored, kept, or maintained in the living quarters or sleeping rooms.

(3) Alcoholic beverages are not stored, kept, or maintained in the living quarters or sleeping rooms except those legally possessed by the individual occupying the quarters or room.

*c.* The commission shall adopt rules to enforce this subsection.

89 Acts, ch 67, §6 SF 124; 89 Acts, ch 231, §33 HF 490

NEW section

Subsection 8 stricken and rewritten

### **99F.7 Licenses—terms and conditions—revocation.**

1. If the commission is satisfied that this chapter and its rules adopted under this chapter applicable to licensees have been or will be complied with, the commission shall issue a license for a period of not more than three years to an applicant to own a gambling game operation and to an applicant to operate an excursion gambling boat. The commission shall decide which of the gambling games authorized under this chapter it will permit. The commission shall decide the number, location, and type of excursion gambling boats licensed under this chapter for operation on the rivers, lakes, and reservoirs of this state. The license shall set forth the name of the licensee, the type of license granted, the place where the excursion gambling boats will operate and dock, and the time and number of days during the excursion season and the off season when gambling may be conducted by the licensee. The commission shall not allow a licensee to conduct gambling games on an excursion gambling boat while docked during the off season if the licensee does not operate gambling excursions for a minimum number of days during the excursion season.

2. A license shall only be granted to an applicant upon the express conditions that:

*a.* The applicant shall not, by a lease, contract, understanding, or arrangement of any kind, grant, assign, or turn over to a person the operation of an excursion gambling boat licensed under this section or of the system of wagering described in section 99F.9. This section does not prohibit a management contract approved by the commission.

*b.* The applicant shall not in any manner permit a person other than the licensee to have a share, percentage, or proportion of the money received for admissions to the excursion gambling boat.

3. The commission shall require, as a condition of granting a license, that an applicant to operate an excursion gambling boat develop, and as nearly as practicable, recreate boats that resemble Iowa's riverboat history.

4. The commission shall require that an applicant utilize Iowa resources, goods and services in the operation of an excursion gambling boat. The commission shall develop standards to assure that a substantial amount of all resources and goods used in the operation of an excursion gambling boat come from Iowa and that a substantial amount of all services and entertainment be provided by Iowans.

5. The commission shall, as a condition of granting a license, require an applicant to provide written documentation that, on each excursion gambling boat:

a. No more than thirty percent of the square footage shall be used for gambling activity.

b. An applicant shall make every effort to ensure that a substantial number of the staff and entertainers employed are residents of Iowa.

c. A section is reserved solely for activities and interests of persons under the age of twenty-one and is staffed to provide adequate supervision.

d. A section is reserved for promotion and sale of arts, crafts, and gifts native to and made in Iowa.

6. It is the intent of the general assembly that employees be paid at least twenty-five percent above the federal minimum wage level.

7. A license shall not be granted if there is substantial evidence that any of the following apply:

a. The applicant has been suspended from operating a game of chance or gambling operation in another jurisdiction by a board or commission of that jurisdiction.

b. The applicant has not demonstrated financial responsibility sufficient to meet adequately the requirements of the enterprise proposed.

c. The applicant is not the true owner of the enterprise proposed.

d. The applicant is not the sole owner, and other persons have ownership in the enterprise, which fact has not been disclosed.

e. The applicant is a corporation and ten percent of the stock of the corporation is subject to a contract or option to purchase at any time during the period for which the license is to be issued unless the contract or option was disclosed to the commission and the commission approved the sale or transfer during the period of the license.

f. The applicant has knowingly made a false statement of a material fact to the commission.

g. The applicant has failed to meet a monetary obligation in connection with an excursion gambling boat.

8. A license shall not be granted if there is substantial evidence that the applicant is not of good repute and moral character or if the applicant has pled guilty to, or has been convicted of, a felony.

9. A licensee shall not loan to any person money or any other thing of value for the purpose of permitting that person to wager on any game of chance.

10. a. A license to conduct gambling games on an excursion gambling boat in a county shall be issued only if the county electorate approves the conduct of the gambling games as provided in this subsection. The board of supervisors, upon receipt of a valid petition meeting the requirements of section 331.306, shall direct the commissioner of elections to submit to the qualified voters of the county a proposition to approve or disapprove the conduct of gambling games on an excursion gambling boat in the county. The proposition shall be submitted at a general election or at a special election called for that purpose. To be submitted at a general election, the petition must be received by the board of supervisors at least sixty days before the election. If a majority of the county voters voting on the proposition favor the conduct of gambling games, the commission may issue one or more licenses as provided in this chapter. If a majority of the county voters voting on the proposition do not favor the conduct of gambling games, a license to

conduct gambling games in the county shall not be issued. After a referendum has been held, another referendum requested by petition shall not be held for at least two years.

b. If licenses to conduct gambling games and to operate an excursion gambling boat are in effect pursuant to a referendum as set forth in this section and are subsequently disapproved by a referendum of the county electorate, the licenses issued by the commission after a referendum approving gambling games on excursion gambling boats shall remain valid and are subject to renewal for a total of nine years from the date of original issue unless the commission revokes a license at an earlier date as provided in this chapter.

c. If, after July 1, 1989, section 99F.1, subsection 5, 99F.4, subsection 4, or 99F.9, subsection 2, is amended, the board of supervisors of a county in which excursion boat gambling has been approved shall submit to the county electorate a proposition to approve or disapprove the conduct of gambling games on excursion gambling boats at a special election at the earliest practicable time. If excursion boat gambling is not approved at the election, paragraph "b" does not apply to the licenses and the commission shall cancel the licenses issued for the county within sixty days of the unfavorable referendum.

11. If a docking fee is charged by a city or a county, a licensee operating an excursion gambling boat shall pay the docking fee one year in advance.

12. A licensee shall not be delinquent in the payment of property taxes or other taxes or fees or in the payment of any other contractual obligation or debt due or owed to a city or county.

13. An excursion gambling boat operated on inland waters of this state shall meet all of the requirements of chapter 106 and is subject to an inspection of its sanitary facilities to protect the environment and water quality before a certificate of registration is issued by the department of natural resources or a license is issued under this chapter.

14. If a licensed excursion boat stops at more than one harbor and travels past a county without stopping at any port in that county, the commission shall require the excursion boat operator to develop a schedule for ports of call in which a county referendum has been approved, and the port of call has the necessary facilities to handle the boat. The commission may limit the schedule to only one port of call per county.

15. Upon a violation of any of the conditions listed in this section, the commission shall immediately revoke the license.

89 Acts, ch 67, §7 SF 124; 89 Acts, ch 139, §2-5 SF 525

NEW section

Subsection 1 stricken and rewritten

Subsection 5, paragraph c stricken and rewritten

Subsection 8 stricken and rewritten

Subsection 10, paragraph b stricken and rewritten as paragraphs b and c

### **99F.8 Bond of licensee.**

A licensee licensed under section 99F.7 shall post a bond to the state of Iowa before the license is issued in a sum as the commission shall fix, with sureties to be approved by the commission. The bond shall be used to guarantee that the licensee faithfully makes the payments, keeps its books and records and makes reports, and conducts its gambling games in conformity with this chapter and the rules adopted by the commission. The bond shall not be canceled by a surety on less than thirty days' notice in writing to the commission. If a bond is canceled and the licensee fails to file a new bond with the commission in the required amount on or before the effective date of cancellation, the licensee's license shall be revoked. The total and aggregate liability of the surety on the bond is limited to the amount specified in the bond.

89 Acts, ch 67, §8 SF 124

NEW section

### 99F.9 Wagering—minors prohibited.

1. Except as permitted in this section, the licensee shall permit no form of wagering on gambling games.

2. Licensees shall only allow a maximum wager of five dollars per hand or play and a maximum loss of two hundred dollars per person during each gambling excursion. However, the commission may adopt rules allowing additional wagers consistent with generally accepted wagering options in the games of twenty-one and dice.

3. The licensee may receive wagers only from a person present on a licensed excursion gambling boat.

4. The licensee shall exchange the money of each wagerer for tokens, chips, or other forms of credit to be wagered on the gambling games. The licensee shall exchange the gambling tokens, chips, or other forms of wagering credit for money at the request of the wagerer.

5. Wagering shall not be conducted with money or other negotiable currency.

6. A person under the age of twenty-one years shall not make a wager on an excursion gambling boat and shall not be allowed in the area of the excursion boat where gambling is being conducted.

7. A licensee shall not conduct gambling games while the excursion gambling boat is docked unless it is temporarily docked for embarking or disembarking passengers, crew or supplies during the course of an excursion cruise, for mechanical problems, adverse weather, or other conditions adversely affecting safe navigation, during the duration of the problem or condition, or as authorized by the commission during off season.

89 Acts, ch 67, §9 SF 124; 89 Acts, ch 139, §6 SF 525  
NEW section  
Subsection 6 stricken and rewritten

### 99F.10 Admission fee—tax—local fees.

1. A qualified sponsoring organization conducting gambling games on an excursion gambling boat licensed under section 99F.7 shall pay the tax imposed by section 99F.11.

2. An excursion boat licensee shall pay to the commission an admission fee for each person embarking on an excursion gambling boat with a ticket of admission. The admission fee shall be set by the commission.

a. If tickets are issued which are good for more than one excursion, the admission fee shall be paid for each person using the ticket on each excursion that the ticket is used.

b. If free passes or complimentary admission tickets are issued, the licensee shall pay the same fee upon these passes or complimentary tickets as if they were sold at the regular and usual admission rate.

c. However, the excursion boat licensee may issue fee-free passes to actual and necessary officials and employees of the licensee or other persons actually working on the excursion gambling boat.

d. The issuance of fee-free passes is subject to the rules of the commission, and a list of all persons to whom the fee-free passes are issued shall be filed with the commission.

3. In addition to the admission fee charged under subsection 2 and subject to approval of excursion gambling boat docking by the voters, a city may adopt, by ordinance, an admission fee not exceeding fifty cents for each person embarking on an excursion gambling boat docked within the city or a county may adopt, by ordinance, an admission fee not exceeding fifty cents for each person embarking on an excursion gambling boat docked outside the boundaries of a city. The admission revenue received by a city or a county shall be credited to the city general fund or county general fund as applicable.

4. In determining the license fees and state admission fees to be charged as provided under section 99F.4 and this section, the commission shall use the amount appropriated to the commission as the basis for determining the amount of revenue to be raised from the license fees and admission fees.

5. No other license tax, permit tax, occupation tax, excursion fee, or taxes on fees shall be levied, assessed, or collected from a licensee by the state or by a political subdivision, except as provided in this chapter.

6. No other excise tax shall be levied, assessed, or collected from the licensee relating to gambling excursions or admission charges by the state or by a political subdivision, except as provided in this chapter.

89 Acts, ch 67, §10 SF 124  
NEW section

#### **99F.11 Wagering tax—rate—allocations.**

A tax is imposed on the adjusted gross receipts received annually from gambling games authorized under this chapter at the rate of five percent on the first one million dollars of adjusted gross receipts, at the rate of ten percent on the next two million dollars of adjusted gross receipts, and at the rate of twenty percent on any amount of adjusted gross receipts over three million dollars. The taxes imposed by this section shall be paid by the licensee to the treasurer of state within ten days after the close of the day when the wagers were made and shall be distributed as follows:

1. If the gambling excursion originated at a dock located in a city, one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the city in which the dock is located and shall be deposited in the general fund of the city. Another one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the county in which the dock is located and shall be deposited in the general fund of the county.

2. If the gambling excursion originated at a dock located in a part of the county outside a city, one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the county in which the dock is located and shall be deposited in the general fund of the county. Another one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the Iowa city nearest to where the dock is located and shall be deposited in the general fund of the city.

3. Three percent of the adjusted gross receipts shall be deposited in the gamblers assistance fund specified in section 99E.10, subsection 1, paragraph "a".

4. The remaining amount of the adjusted gross receipts tax shall be credited to the general fund of the state.

89 Acts, ch 67, §11 SF 124; 89 Acts, ch 139, §7 SF 525  
NEW section  
Subsection 3 stricken and rewritten

#### **99F.12 Licensees—records—reports—supervision.**

A licensee shall keep its books and records so as to clearly show all of the following:

1. The total number of admissions to gambling excursions conducted by the licensee on each day, including the number of admissions upon free passes or complimentary tickets.

2. The amount received daily from admission fees.

3. The total amount of money wagered during each excursion day and the adjusted gross receipts for the day.

The licensee shall furnish to the commission reports and information as the commission may require with respect to its activities. The gross receipts and adjusted gross receipts from gambling shall be separately handled and accounted for from all other moneys received from operation of an excursion gambling boat. The commission may designate a representative to board a licensed excursion gambling boat, who shall have full access to all places within the enclosure of the

boat, who shall directly supervise the handling and accounting of all gross receipts and adjusted gross receipts from gambling, and who shall supervise and check the admissions. The compensation of a representative shall be fixed by the commission but shall be paid by the licensee.

The books and records kept by a licensee as provided by this section are public records and the examination, publication, and dissemination of the books and records are governed by the provisions of chapter 22.

89 Acts, ch 67, §12 SF 124; 89 Acts, ch 139, §8 SF 525

NEW section

Unnumbered paragraph 2 stricken and rewritten

### 99F.13 Audit of licensee operations.

Within ninety days after the end of each month, the licensee shall transmit to the commission an audit of the financial transactions and condition of the licensee's operations conducted under this chapter. Additionally, within ninety days after the end of the licensee's fiscal year, the licensee shall transmit to the commission an audit of the financial transactions and condition of the licensee's total operations. All audits shall be conducted by certified public accountants registered or licensed in the state of Iowa under chapter 116.

89 Acts, ch 67, §13 SF 124

NEW section

### 99F.14 Annual report of commission.

The commission shall make an annual report to the governor, for the period ending December 31 of each year. Included in the report shall be an account of the commission's actions, its financial position and results of operation under this chapter, the practical results attained under this chapter, and any recommendations for legislation which the commission deems advisable.

89 Acts, ch 67, §14 SF 124

NEW section

### 99F.15 Prohibited activities—penalties.

1. A person is guilty of an aggravated misdemeanor for any of the following:
  - a. Operating a gambling excursion where wagering is used or to be used without a license issued by the commission.
  - b. Operating a gambling excursion where wagering is permitted other than in the manner specified by section 99F.9.
  - c. Acting, or employing a person to act, as a shill or decoy to encourage participation in a gambling game.
2. A person knowingly permitting a person under the age of twenty-one years to make a wager is guilty of a simple misdemeanor.
3. A person wagering or accepting a wager at any location outside the excursion gambling boat is in violation of section 725.7.
4. A person commits a class "D" felony and, in addition, shall be barred for life from excursion gambling boats under the jurisdiction of the commission, if the person does any of the following:
  - a. Offers, promises, or gives anything of value or benefit to a person who is connected with an excursion gambling boat operator including, but not limited to, an officer or employee of a licensee or holder of an occupational license pursuant to an agreement or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to whom the offer, promise, or gift was made in order to affect or attempt to affect the outcome of a gambling game, or to influence official action of a member of the commission.
  - b. Solicits or knowingly accepts or receives a promise of anything of value or benefit while the person is connected with an excursion gambling boat including, but not limited to, an officer or employee of a licensee, or holder of an occupational license, pursuant to an understanding or arrangement or with the intent that the

promise or thing of value or benefit will influence the actions of the person to affect or attempt to affect the outcome of a gambling game, or to influence official action of a member of the commission.

c. Uses a device to assist in any of the following:

(1) In projecting the outcome of the game.

(2) In keeping track of the cards played.

(3) In analyzing the probability of the occurrence of an event relating to the gambling game.

(4) In analyzing the strategy for playing or betting to be used in the game except as permitted by the commission.

d. Cheats at a gambling game.

e. Manufactures, sells, or distributes any cards, chips, dice, game or device which is intended to be used to violate any provision of this chapter.

f. Instructs a person in cheating or in the use of a device for that purpose with the knowledge or intent that the information or use conveyed may be employed to violate any provision of the chapter.

g. Alters or misrepresents the outcome of a gambling game on which wagers have been made after the outcome is made sure but before it is revealed to the players.

h. Places a bet after acquiring knowledge, not available to all players, of the outcome of the gambling game which is the subject of the bet or to aid a person in acquiring the knowledge for the purpose of placing a bet contingent on that outcome.

i. Claims, collects, or takes, or attempts to claim, collect, or take, money or anything of value in or from the gambling games, with intent to defraud, without having made a wager contingent on winning a gambling game, or claims, collects, or takes an amount of money or thing of value of greater value than the amount won.

j. Knowingly entices or induces a person to go to any place where a gambling game is being conducted or operated in violation of the provisions of this chapter with the intent that the other person plays or participates in that gambling game.

k. Uses counterfeit chips or tokens in a gambling game.

l. Knowingly uses, other than chips, tokens, coin, or other methods or credit approved by the commission, legal tender of the United States of America, or uses coin not of the denomination as the coin intended to be used in the gambling games.

m. Has in the person's possession any device intended to be used to violate a provision of this chapter.

n. Has in the person's possession, except a gambling licensee or employee of a gambling licensee acting in furtherance of the employee's employment, any key or device designed for the purpose of opening, entering, or affecting the operation of a gambling game, drop box, or an electronic or mechanical device connected with the gambling game or for removing coins, tokens, chips or other contents of a gambling game.

5. The possession of more than one of the devices described in subsection 4, paragraphs "c", "e", "m", or "n", permits a rebuttable inference that the possessor intended to use the devices for cheating.

6. Except for wagers on gambling games or exchanges for money as provided in section 99F.9, subsection 4, a licensee who exchanges tokens, chips, or other forms of credit to be used on gambling games for anything of value commits a simple misdemeanor.

89 Acts, ch 67, §15 SF 124; 89 Acts, ch 139, §9 SF 525

NEW section

Subsection 2 stricken and rewritten

### **99F.16 Forfeiture of property.**

1. Anything of value, including all traceable proceeds including but not limited to real and personal property, moneys, negotiable instruments, securities, and conveyances, is subject to forfeiture to the state of Iowa if the item was used for any of the following:

- a. In exchange for a bribe intended to affect the outcome of a gambling game.
- b. In exchange for or to facilitate a violation of this chapter.

2. All moneys, coin, and currency found in close proximity of wagers, or of records of wagers are presumed forfeited. The burden of proof is upon the claimant of the property to rebut this presumption.

3. Subsections 1 and 2 do not apply if the act or omission which would give rise to the forfeiture was committed or omitted without the owner's knowledge or consent.

89 Acts, ch 67, §16 SF 124

NEW section

### **99F.17 Distributors and manufacturers—licenses.**

1. A manufacturer or distributor of gambling games or implements of gambling shall annually apply for a license upon a form prescribed by the commission before the first day of April in each year and shall submit the appropriate license fee. An applicant shall provide the necessary information as the commission requires. The license fee for a distributor is one thousand dollars, and the license fee for a manufacturer is two hundred fifty dollars. The license fees shall be credited to the special account provided for in section 99F.4, subsection 2.

2. A licensee shall acquire all gambling games or implements of gambling from a distributor licensed pursuant to this chapter. A licensee shall not sell or give gambling games or implements of gambling to another licensee.

3. A licensee shall not be a manufacturer or distributor of gambling games or implements of gambling.

4. The commission may suspend or revoke the license of a distributor or manufacturer for a violation of this chapter or a rule adopted pursuant to this chapter committed by the distributor or manufacturer or an officer, director, employee, or agent of the manufacturer or distributor.

5. A manufacturer or distributor of gambling games who has been granted a license under this section shall have a representative within this state to take delivery of gambling games or implements of gambling prior to delivery to a licensee. The manufacturer or distributor shall provide the commission with a copy of the invoice showing the items shipped and a copy of the bill of lading. When received, the gambling games or implements of gambling shall be stored in a public warehouse in this state until delivered to the licensee or, after delivery is complete, the shipment may be transferred to a licensee.

89 Acts, ch 67, §17 SF 124

NEW section

## CHAPTER 101

## FLAMMABLE LIQUIDS AND LIQUEFIED PETROLEUM GASES

## DIVISION I

## GENERAL PROVISIONS

**101.12 Aboveground petroleum tanks authorized.**

Rules of the state fire marshal shall permit installation of aboveground petroleum storage tanks for retail motor vehicle fuel outlets in cities of one thousand or less population.

89 Acts, ch 131, §3 HF 447  
NEW section

**101.13 through 101.20 Reserved.**

## DIVISION II

## ABOVEGROUND STORAGE TANKS

**101.21 Definitions.**

As used in this part unless the context otherwise requires:

1. "*Aboveground storage tank*" means one or a combination of tanks, including connecting pipes connected to the tanks which are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes, is more than ninety percent above the surface of the ground. Aboveground storage tank does not include any of the following:

a. Aboveground tanks of one thousand one hundred gallons or less capacity.  
b. Tanks used for storing heating oil for consumptive use on the premises where stored.

c. Underground storage tanks as defined by section 455B.471.

d. A flow-through process tank, or a tank containing a regulated substance, other than motor vehicle fuel used for transportation purposes, for use as part of a manufacturing process, system, or facility.

2. "*Nonoperational aboveground tank*" means an aboveground storage tank in which regulated substances are not deposited or from which regulated substances are not dispensed after July 1, 1989.

3. "*Operator*" means a person in control of, or having responsibility for, the daily operation of the aboveground storage tank.

4. "*Owner*" means:

a. In the case of an aboveground storage tank in use on or after July 1, 1989, a person who owns the aboveground storage tank used for the storage, use, or dispensing of regulated substances.

b. In the case of an aboveground storage tank in use before July 1, 1989, but no longer in use on that date, a person who owned the tank immediately before the discontinuation of its use.

5. "*Regulated substance*" means regulated substance as defined in section 455B.471.

6. "*Release*" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an aboveground storage tank into groundwater, surface water, or subsurface soils.

7. "*State fire marshal*" means the state fire marshal, or the state fire marshal's designee.

8. "*Tank site*" means a tank or grouping of tanks within close proximity of each other located on the facility for the purpose of storing regulated substances.

89 Acts, ch 131, §4 HF 447  
NEW section

**101.22 Report of existing and new tanks—registration fee—tag—penalty.**

1. Except as provided in subsection 2, the owner or operator of an aboveground storage tank existing on or before July 1, 1989, shall notify the state fire marshal

in writing by May 1, 1990, of the existence of each tank and specify the age, size, type, location, and uses of the tank.

2. The owner of an aboveground storage tank taken out of operation between January 1, 1979, and July 1, 1989, shall notify the state fire marshal in writing by July 1, 1990, of the existence of the tank unless the owner knows the tank has been removed. 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 aboveground storage tank after July 1, 1989, shall notify the state fire marshal in writing within thirty days of the existence of the tank and specify the age, size, type, location, and uses of the tank.

4. The registration notice of the owner or operator to the state fire marshal 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 general fund.

5. A person who deposits a regulated substance in an aboveground storage tank shall notify the owner or operator in writing of the notification requirements of this section.

6. A person who sells or constructs a tank intended to be used as an aboveground storage tank shall notify the purchaser of the tank in writing of the notification requirements of this section applicable to the purchaser.

7. It shall be unlawful to deposit a regulated substance in an aboveground storage tank which has not been registered pursuant to subsections 1 through 5.

The state fire marshal shall furnish the owner or operator of an aboveground storage tank with a registration tag for each aboveground storage tank registered with the state fire marshal. The owner or operator shall affix the tag to the fill pipe of each registered aboveground storage tank. A person who conveys or deposits a regulated substance shall inspect the aboveground storage tank to determine the existence or absence of the registration tag. If a registration tag is not affixed to the aboveground 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 provides the owner or operator with another notice as required by subsection 5, and that the person provides the owner or operator with an aboveground storage tank registration form. It is the owner or operator's duty to comply with registration requirements. A late registration penalty of twenty-five dollars is imposed in addition to the registration fee for a tank registered after the required date.

89 Acts, ch 131, §5 HF 447  
NEW section

### **101.23 State fire marshal reporting rules.**

The state fire marshal shall adopt rules pursuant to chapter 17A relating to reporting requirements necessary to enable the state fire marshal to maintain an accurate inventory of aboveground storage tanks.

89 Acts, ch 131, §6 HF 447  
NEW section

### **101.24 Duties and powers of the state fire marshal.**

The state fire marshal shall:

1. Inspect and investigate the facilities and records of owners and operators of aboveground storage tanks as may be necessary to determine compliance with this division and the rules adopted pursuant to this division. An inspection or

investigation shall be conducted subject to subsection 4. For purposes of developing a rule, maintaining an accurate inventory or enforcing this division, the department may:

a. Enter at reasonable times any establishment or other place where an aboveground storage tank is located.

b. Inspect and obtain samples from any person of a regulated substance and conduct monitoring or testing of the tanks, associated equipment, contents or surrounding soils, air, surface water and groundwater. Each inspection shall be commenced and completed with reasonable promptness.

(1) If the state fire marshal obtains a sample, prior to leaving the premises, the fire marshal shall give the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each sample equal in volume or weight to the portion retained. If the sample is analyzed, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

(2) Documents or information obtained from a person under this subsection shall be available to the public except as provided in this subparagraph. Upon a showing satisfactory to the state fire marshal by a person that public disclosure of documents or information, or a particular part of the documents or information to which the state fire marshal has access under this subsection would divulge commercial or financial information entitled to protection as a trade secret, the state fire marshal shall consider the documents or information or the particular portion of the documents or information confidential. However, the document or information may be disclosed to officers, employees, or authorized representatives of the United States charged with implementing the federal Solid Waste Disposal Act, to employees of the state of Iowa or of other states when the document or information is relevant to the discharge of their official duties, and when relevant in any proceeding under the federal Solid Waste Disposal Act or this division.

2. Maintain an accurate inventory of aboveground storage tanks.

3. Take any action allowed by law which, in the state fire marshal's judgment, is necessary to enforce or secure compliance with this division or any rule adopted pursuant to this division.

4. Conduct investigations of complaints received directly, referred by other agencies, or other investigations deemed necessary. While conducting an investigation, the state fire marshal may enter at any reasonable time in and upon any private or public property to investigate any actual or possible violation of this division or the rules or standards adopted under this division. However, the owner or person in charge shall be notified.

a. If the owner or operator of any property refuses admittance, or if prior to such refusal the state fire marshal demonstrates the necessity for a warrant, the state fire marshal may make application under oath or affirmation to the district court of the county in which the property is located for the issuance of a search warrant.

b. In the application the state fire marshal shall state that an inspection of the premises is mandated by the laws of this state or that a search of certain premises, areas, or things designated in the application may result in evidence tending to reveal the existence of violations of public health, safety, or welfare requirements imposed by statutes, rules, or ordinances established by the state or a political subdivision of the state. The application shall describe the area, premises, or thing to be searched, give the date of the last inspection if known, give the date and time of the proposed inspection, declare the need for such inspection, recite that notice of the desire to make an inspection has been given to affected persons and that admission was refused if that be the fact, and state that the inspection has no purpose other than to carry out the purpose of the statute, rule, or

ordinance pursuant to which inspection is to be made. If an item of property is sought by the state fire marshal it shall be identified in the application.

c. If the court is satisfied from the examination of the applicant, and of other witnesses, if any, and of the allegations of the application of the existence of the grounds of the application, or that there is probable cause to believe in their existence, the court may issue a search warrant.

d. In making inspections and searches pursuant to the authority of this division, the state fire marshal must execute the warrant as follows:

- (1) Within ten days after its date.
- (2) In a reasonable manner, and any property seized shall be treated in accordance with the provisions of chapters 808 and 809.
- (3) Subject to any restrictions imposed by the statute, rule or ordinance pursuant to which inspection is made.

89 Acts, ch 131, §7 HF 447  
NEW section

### **101.25 Violations—orders**

1. If substantial evidence exists that a person has violated or is violating a provision of this division or a rule adopted under this division the state fire marshal may issue an order directing the person to desist in the practice which constitutes the violation, and to take corrective action as necessary to ensure that the violation will cease, and may impose appropriate administrative penalties pursuant to section 101.26. The person to whom the order is issued may appeal the order as provided in chapter 17A. On appeal, the administrative law judge may affirm, modify, or vacate the order of the state fire marshal.

2. However, if it is determined by the state fire marshal that an emergency exists respecting any matter affecting or likely to affect the public health, the fire marshal may issue any order necessary to terminate the emergency without notice and without hearing. The order is binding and effective immediately and until the order is modified or vacated at an administrative hearing or by a district court.

3. The state fire marshal may request the attorney general to institute legal proceedings pursuant to section 101.26.

89 Acts, ch 131, §8 HF 447  
NEW section

### **101.26 Penalties—burden of proof.**

1. A person who violates this division or a rule or order adoption issued pursuant to this division is subject to a civil penalty not to exceed one hundred dollars for each day during which the violation continues, up to a maximum of one thousand dollars; however, if the tank is registered within thirty days after the state fire marshal issues a cease and desist order pursuant to section 101.25, subsection 1, the civil penalty under this section shall not accrue. The civil penalty is an alternative to a criminal penalty provided under this division.

2. A person who knowingly fails to notify or makes a false statement, representation, or certification in a record, report, or other document filed or required to be maintained under this division, or violates an order issued under this division, is guilty of an aggravated misdemeanor.

3. The attorney general, at the request of the state fire marshal, shall institute any legal proceedings, including an action for an injunction, necessary to enforce the penalty provisions of this division or to obtain compliance with the provisions of this division or rules adopted or order pursuant to this division. In any action, previous findings of fact of the state fire marshal after notice and hearing are conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

4. In all proceedings with respect to an alleged violation of this division or a rule adopted or order issued by the state fire marshal pursuant to this division, the burden of proof is upon the state fire marshal.

5. If the attorney general has instituted legal proceedings in accordance with this section, all related issues which could otherwise be raised by the alleged violator in a proceeding for judicial review under section 101.27 shall be raised in the legal proceedings instituted in accordance with this section.

89 Acts, ch 131, §9 HF 447  
NEW section

### **101.27 Judicial review.**

Except as provided in section 101.26, subsection 5, judicial review of an order or other action of the state fire marshal may be sought in accordance with chapter 17A. Notwithstanding chapter 17A, the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed or the final order was entered.

89 Acts, ch 131, §10 HF 447  
NEW section

### **101.28 Fees for certification inspections of underground storage tanks.**

The state fire marshal, the state fire marshal's designee, or a local fire marshal, authorized to conduct underground storage tank certification inspections under section 455G.11, subsection 6, shall charge the person requesting a certification inspection a fee to recover the costs of authorized training, inspection, and inspection program administration subject to rules adopted by the state fire marshal.

89 Acts, ch 131, §11 HF 447  
NEW section

## **CHAPTER 102**

### **AUTHORITY AT FIRE SCENES**

#### **102.1 Definition.**

As used in this chapter, "*fire department*" means the fire department of a city, township, or benefited fire district.

89 Acts, ch 132, §1 HF 241  
NEW section

#### **102.2 Authority at fires.**

A fire chief or other authorized officer of a fire department, in charge of a fire scene which involves the protection of life or property, may direct an operation as necessary to extinguish or control a fire, perform a rescue operation, investigate the existence of a suspected or reported fire, gas leak, or other hazardous condition, or take any other action as deemed necessary in the reasonable performance of the department's duties. In exercising this power, a fire chief may prohibit an individual, vehicle, or vessel from approaching a fire scene and may remove from the scene any object, vehicle, vessel, or individual that may impede or interfere with the operations of the fire department.

89 Acts, ch 132, §2 HF 241  
NEW section

#### **102.3 Authority to barricade.**

The fire chief or other authorized officer of the fire department in charge of a fire scene may place or erect ropes, guards, barricades, or other obstructions across a street, alley, right-of-way, or private property near the location of the fire or emergency so as to prevent accidents or interference with the fire fighting efforts

of the fire department, to control the scene until any required investigation is complete, or to preserve evidence related to the fire or other emergency.

89 Acts, ch 132, §3 HF 241  
NEW section

#### **102.4 Traffic control.**

Notwithstanding a contrary provision of this chapter, if a peace officer is on the scene, the peace officer is in charge of traffic control and a peace officer shall not be prohibited from performing the duties of a peace officer at the fire scene.

89 Acts, ch 132, §4 HF 241  
NEW section

#### **102.5 Penalty.**

A person who disobeys an order of a fire chief, other officer of a fire department, or peace officer assisting the fire department which is issued pursuant to section 102.2 or 102.3, is guilty of a simple misdemeanor.

89 Acts, ch 132, §5 HF 241  
NEW section

## **CHAPTER 103A**

### **STATE BUILDING CODE**

#### **103A.10 Effect and application.**

1. The state building code shall, for the buildings and structures to which it is applicable, constitute a lawful local building code.

2. The state building code shall be applicable:

- a. To all buildings and structures owned by the state or an agency of the state.
- b. In each governmental subdivision where the governing body has enacted an ordinance accepting the application of the code.

3. Provisions of the state building code relating to the manufacture and installation of factory-built structures shall apply throughout the state. Factory-built structures approved by the commissioner shall be deemed to comply with all building regulations applicable to its manufacture and installation and shall be exempt from any local building regulations.

4. Notwithstanding the provisions of section 103A.22, subsection 1:

a. Provisions of the state building code establishing thermal efficiency energy conservation standards shall be applicable to all new construction owned by the state, an agency of the state or a political subdivision of the state, to all new construction located in a governmental subdivision which has adopted either the state building code or a local building code or compilation of requirements for building construction and to all other new construction in the state which will contain more than one hundred thousand cubic feet of enclosed space that is heated or cooled.

b. Provisions of the state building code establishing lighting efficiency standards shall be applicable to all new construction owned by the state, an agency of the state or a political subdivision of the state and to all new construction, in the state, of buildings which are open to the general public during normal business hours.

89 Acts, ch 39, §1 SF 500  
Subsection 2, paragraph b amended

#### **103A.12 Adoption and withdrawal—procedure.**

The state building code is applicable in each governmental subdivision of the state in which the governing body has enacted an ordinance accepting the applicability of the code and has filed a certified copy of the ordinance in the office

of the commissioner and in the office of the secretary of state. The state building code becomes effective in the governmental subdivision upon the date fixed by the governmental subdivision ordinance, if the date is not more than six months after the date of adoption of the ordinance.

A governmental subdivision in which the state building code is applicable may by ordinance, at any time after one year has elapsed since the code became applicable, withdraw from the application of the code, if before the 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 ordinance becomes effective at a time to be specified in it, which must be not less than one hundred eighty days after the date of adoption. Upon the effective date of the ordinance, the state building code ceases to apply to the governmental subdivision except that construction of a building or structure pursuant to a permit previously issued is not 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.

89 Acts, ch 39, §2 SF 500  
Unnumbered paragraphs 1 and 2 amended

**103A.24 Bond for out-of-state contractors.** Repealed by 89 Acts, ch 254, §4. See §91C.7. HF 643

**103A.25 Prior resolutions.**

A resolution accepting the state building code, which was adopted before the effective date of this Act, is an ordinance for the purpose of this chapter.

89 Acts, ch 39, §3 SF 500  
NEW section

**103A.26 to 103A.29 Reserved.**

## CHAPTER 104A

### BUILDING ENTRANCE FOR HANDICAPPED PERSONS

**104A.7 Parking spaces—penalty.**

All public and private buildings and facilities, temporary and permanent, used by the general public, which are not residences and which provide ten or more parking spaces, shall set aside handicapped parking spaces as required under section 321L.5, subsection 3.

All public and private buildings and facilities, temporary and permanent, which are residences excluding condominiums as defined in chapter 499B and which provide ten or more parking spaces, excluding extended health care facilities, shall set aside at least one handicapped parking space as defined in section 321L.1 for each individual dwelling unit in which a handicapped person resides.

Buildings and facilities required under this section to provide handicapped parking spaces shall set aside at least one such space.

A person who violates any of the provisions of this section is guilty of a simple misdemeanor.

89 Acts, ch 247, §2 HF 745  
1989 amendments take effect January 1, 1990; 89 Acts, ch 247, §21 HF 745  
Unnumbered paragraphs 1 and 2 amended

## CHAPTER 106

### WATER NAVIGATION REGULATIONS

#### 106.34A Vehicles prohibited in streambed.

1. Except as provided in subsection 2, a person shall not operate a motor vehicle in any of the following:

a. Any portion of a meandered stream.  
b. Any portion of the bed of a nonmeandered stream which has been identified as a navigable stream or river by rule adopted by the department and which is covered by water.

c. Any portion of a stream identified as a trout stream by the department.

2. This section does not prohibit the use of ford crossings of public or private roads or any other ford crossing when used for agricultural purposes, the operation of construction vehicles engaged in lawful construction, repair, or maintenance in a streambed, or the operation of motor vehicles on ice.

3. The department of natural resources shall adopt rules identifying the navigable streams and rivers in which a motor vehicle may be operated. The department may exempt participants of organized special events from this section where the organized special event is approved by a state or local authority.

4. As used in this section, "motor vehicle" means a motor vehicle as defined in section 321.1, subsection 2.

89 Acts, ch 244, §41 HF 477  
NEW section

#### 106.52 Fees remitted to commission.

Within ten days after the end of each month, a county recorder shall remit to the commission all fees collected by the recorder during the previous month. Before May 10 in odd-numbered years, a county recorder shall remit to the commission all unused license blanks for the previous biennium. All fees collected for the registration of vessels shall be forwarded by the commission to the treasurer of the state, who shall place the money in a special conservation fund. The money so collected is appropriated to the commission solely for the administration and enforcement of navigation laws and water safety.

89 Acts, ch 102, §1 SF 367  
Section amended

## CHAPTER 109

### WILDLIFE CONSERVATION

#### 109.38 Prohibited acts—restrictions on the taking of wildlife—special licenses.

It is unlawful for a person to take, pursue, kill, trap or ensnare, buy, sell, possess, transport, or attempt to so take, pursue, kill, trap or ensnare, buy, sell, possess, or transport any game, protected nongame animals, fur-bearing animals or fur or skin of such animals, mussels, frogs, spawn or fish or any part thereof, except upon the terms, conditions, limitations, and restrictions set forth herein,

and administrative rules necessary to carry out the purposes set out in section 109.39, or as provided by the Code.

1. The commission may upon its own motion and after an investigation, alter, limit, or restrict the methods or means employed and the instruments or equipment used in taking wild mammals, birds subject to section 109.48, fish, reptiles, and amphibians, if the investigation reveals that the action would be desirable or beneficial in promoting the interests of conservation, or the commission may, after an investigation when it is found there is imminent danger of loss of fish through natural causes, authorize the taking of fish by means found advisable to salvage imperiled fish populations.

2. If the commission finds that the number of hunters licensed or the type of license issued to take deer or wild turkey should be limited or further regulated the commission shall conduct a drawing to determine which applicants shall receive a license and the type of license. Applications for licenses shall be received during a period established by the commission. At the end of the period a drawing shall be conducted. The commission may establish rules to issue licenses after the established application period. If an applicant receives a deer license which is more restrictive than licenses issued to others for the same period and place, the applicant shall receive a certificate with the license entitling the applicant to priority in the drawing for the less restrictive deer licenses the following year. The certificate must accompany that person's application the following year, or the applicant will not receive this priority. Persons purchasing a deer license for the gun season under this section and under section 110.1 are not eligible for a gun deer-hunting license under section 110.24, except as authorized by rules of the department. This subsection does not apply to the hunting of wild turkey on game breeding and shooting preserves licensed under chapter 110A.

3. The commission shall issue a special turkey hunting license to either the owner or the tenant of a farm unit or a member of the owner's or tenant's immediate family if the person makes a written application to the commission and pays the fee provided for the regular turkey hunting license. The special license is valid only for hunting on the farm unit of the owner or tenant. Only one special license may be issued for a farm unit. The application must contain the consent of the owner if the tenant or tenant's family member applies for the license. A person purchasing a regular turkey hunting license is not eligible to purchase a special license under this subsection. Applications for the special turkey licenses must be received by the commission at least thirty days prior to the opening of the turkey hunting season. The special turkey hunting licensees are subject to all other laws regarding the hunting of turkeys.

89 Acts, ch 87, §1 HF 6  
Subsection 2 amended

### **109.90 Disturbing dens.**

A person shall not molest or disturb, in any manner, any den, lodge, or house of a fur-bearing animal or beaver dam except by written permission of an officer appointed by the director.

This section does not prohibit the owner from destroying a den to protect the owner's property.

89 Acts, ch 83, §23 SF 112  
Unnumbered paragraph 2 amended

### **109.95 License—reciprocity.**

A license shall be required of each fur dealer and each employee, agent, or representative of a fur dealer except when the employee, agent, or representative is operating solely on the premises of a licensed fur dealer. A fur dealer shall conduct business only at the location specified on the dealer's license, at an established fur auction, at the nonadvertised residence of a licensed fur harvester,

or at the place of business specified on the license of any fur dealer. A licensed fur dealer may purchase location permits to operate at locations other than at the location specified on the fur dealer's license. Each location permit shall be valid only for the one location specified on the location permit and shall entitle the fur dealer and employee, agent, or representative of the licensed fur dealer to operate at that location. The commission shall, upon application and the payment of the required license fee, furnish the proper license and location permits to the dealer.

A resident of another state shall pay the fee provided by statute for the nonresident fur dealer's license unless that state has a reciprocity agreement with this state. The reciprocity agreement must provide that each state will charge nonresidents from the other state the same fee for the nonresident fur dealer's license and the fee under the agreement must be less than the statutory fee of this state for nonresidents and higher than the statutory fee of this state for residents.

89 Acts, ch 90, §1 HF 480  
Unnumbered paragraph 1 amended

## CHAPTER 109B

### COMMERCIAL FISHING

#### 109B.4 Commercial licenses and gear tags.

1. A person shall not use or operate commercial gear unless at least one individual at the site where the commercial gear is being operated possesses an appropriate valid commercial license, or a designated operator's license. A license is valid from the date of issue to January 10 of the succeeding calendar year.

2. A commercial fisher may designate a person as a designated operator to lift and to fish with any licensed commercial fishing gear owned by the commercial fisher. A commercial fisher shall not have more than five designated operators. A designated operator's license shall be assigned to not more than three operators during a year and a designated operator's license shall be valid for use only by an operator who possesses the license and has signed the license. The signature of any preceding designated operator who possessed the license shall be crossed out. A designated operator shall not lift or fish any commercial fishing gear without possessing a designated operator's license which is signed by the operator. A designated operator's license which is not signed by the operator in possession of the license is forfeited to the state.

3. A boundary water annual sport trotline license permits the licensee to use a maximum of four trotlines with two hundred hooks in the aggregate. All boundary water sport trotlines shall be tagged with the name and address of the licensee on a metal tag affixed above the waterline.

4. Commercial fishers and turtle fishers shall purchase gear tags from the commission to be affixed to each piece of gear in use. Notwithstanding the fee rates for gear tags of subsection 7, the minimum fee for a gear tag is five dollars. All tags are valid for ten years from the date of issue. In addition to the gear tags, all gear shall be tagged with a metal tag showing the name and address of the licensee and whether the gear is fish or turtle gear.

5. All numbered fish gear tags are interchangeable among the different types of commercial fishing gear.

6. Annual license fees are as follows:

a. Commercial fishing, resident .....	\$ 200.00
b. Commercial fishing, nonresident .....	\$ 400.00
c. Designated operator, resident .....	\$ 50.00
d. Designated operator, nonresident .....	\$ 100.00
e. Commercial turtle, resident .....	\$ 50.00
f. Commercial turtle, nonresident .....	\$ 100.00

<i>g.</i> Commercial mussel, resident .....	\$ 30.00
<i>h.</i> Commercial mussel buyer, resident .....	\$ 300.00
<i>i.</i> Commercial mussel buyer, nonresident .....	\$ 2,500.00
<i>j.</i> Boundary water sport trotline, resident .....	\$ 10.00
<i>k.</i> Boundary water sport trotline, nonresident .....	\$ 20.00

7. Commercial fish gear tags are required on the following units of commercial fishing gear at the listed fee:

<i>a.</i> Seine, resident, one gear tag for each 100 feet or fraction thereof .....	\$ 1.00
<i>b.</i> Seine, nonresident, one gear tag for each 100 feet or fraction thereof .....	\$ 2.00
<i>c.</i> Trammel net, resident, one gear tag for each 100 feet or fraction thereof .....	\$ 1.00
<i>d.</i> Trammel net, nonresident, one gear tag for each 100 feet or fraction thereof .....	\$ 2.00
<i>e.</i> Gill net, resident, one gear tag for each 100 feet or fraction thereof .....	\$ 1.00
<i>f.</i> Gill net, nonresident, one gear tag for each 100 feet or fraction thereof .....	\$ 2.00
<i>g.</i> Entrapment nets, resident, one gear tag per net .....	\$ 1.00
<i>h.</i> Entrapment nets, nonresident, one gear tag per net .....	\$ 2.00
<i>i.</i> Commercial trotline, resident, one gear tag for each 50 hooks or less .....	\$ 1.00
<i>j.</i> Commercial trotline, nonresident, one gear tag for each 50 hooks or less .....	\$ 2.00

8. Turtle trap gear tags are not interchangeable with other commercial gear. Turtle trap gear tag fees are as follows:

<i>a.</i> Commercial turtle trap, resident, one gear tag per trap .....	\$ 1.00
<i>b.</i> Commercial turtle trap, nonresident, one gear tag per trap .....	\$ 2.00

89 Acts, ch 192, §1, 2 HF 198; 89 Acts, ch 119, §1 HF 687  
 Subsections 1 and 2 amended  
 Subsection 6, paragraph h stricken and paragraphs i-l relettered as h-k

**109B.11 Turtles.**

1. A person shall not take, possess, or sell turtles from the waters of the state without an appropriate license.

*a.* A valid sport fishing license entitles a person to take and possess a maximum of one hundred pounds of live turtles or fifty pounds of dressed turtles. The sale of live or dressed turtles is not permitted with a sport fishing license.

*b.* A commercial turtle license is required to take and possess more than one hundred pounds of live or fifty pounds of dressed turtles. The holder of a commercial turtle license may sell live or dressed turtles.

*c.* A commercial fishing license or a designated operator's license entitles fishers to operate any licensed commercial fishing gear for taking, possessing, or selling turtles.

*d.* An individual possessing a valid commercial turtle license may have the assistance of one unlicensed individual in the commercial taking of turtles.

2. It is unlawful to take, possess, or sell any species of turtles except those designated by the commission by rule.

3. The method of taking turtles shall only be by hand, turtle hook, turtle trap, licensed commercial fishing gear, or other means designated by commission rules. Sport fishers may also use hook-and-line in catching turtles.

4. Any unattended fishing gear used to take turtles on a sport fishing license shall have affixed a metal tag provided by the owner bearing the owner's name and address.

89 Acts, ch 192, §3 HF 198  
Subsection 1, NEW paragraph d

**109B.12 Freshwater mussels.**

1. A person shall not take, possess, or sell freshwater mussels from the waters of the state without an appropriate license.

a. A sport fishing license entitles a person to take and possess a maximum of twenty pounds of mussels or shells daily. The possession limit for each licensee is twenty pounds of live mussels or shells. Sale of mussels or shells is not permitted with a sport fishing license.

b. A commercial mussel license is required to take more than twenty pounds of mussels or shells daily, or possess more than twenty pounds of mussels or shells. The holder of a commercial mussel license may sell mussels or shells.

c. A commercial mussel buyer license is required to buy mussels or shells.

d. An individual possessing a valid commercial mussel license may have the assistance of one unlicensed individual in the commercial taking of mussels.

2. A person may take all species of freshwater mussels, or their parts, except where otherwise prohibited by rules of the commission.

3. The method of taking freshwater mussels shall only be by hand, by diving, or by crowfoot bar, a device designed to catch mussels by inserting hooks between the shells, or by other means designated by rules of the commission. A crowfoot bar shall not exceed twenty feet in length and a licensee shall not fish more than three bars.

89 Acts, ch 192, §4 HF 198  
Subsection 1, NEW paragraph d

**CHAPTER 110**

**FISHING, HUNTING, AND RELATED LICENSES, SEIZED PROPERTY, AND GUNS**

**110.1 Licenses—fees.**

Except as otherwise provided in this chapter, no person shall fish, trap, hunt, pursue, catch, kill or take in any manner, or use or have possession of, or sell or transport all or any portion of any wild animal, bird, game or fish, the protection and regulation of which is desirable for the conservation of the resources of the state, without first procuring a license or certificate so to do and the payment of a fee as follows:

- 1. Fishing licenses:
  - a. Legal residents except as otherwise provided ..... \$ 8.50
  - b. Lifetime license for legal residents permanently disabled or sixty-five years of age or older ..... \$ 8.50
  - c. Nonresident license ..... \$ 15.50
  - d. Three-day license for residents and nonresidents ..... \$ 5.50
  - e. Trout stamp ..... \$ 8.00
- 2. Hunting licenses:
  - a. Legal residents except as otherwise provided ..... \$ 8.50
  - b. Deer hunting license for residents ..... \$ 20.00
  - c. Wild turkey hunting license for residents ..... \$ 20.00
  - d. Nonresidents hunting license ..... \$ 47.50
  - e. Deer hunting license for nonresidents ..... \$100.00
  - f. Wild turkey hunting license for nonresidents, minimum fee ..... \$ 50.00

3. Hunting and fishing combined licenses:	
a. Legal residents except as otherwise provided .....	\$ 15.50
b. Lifetime license for residents permanently disabled or sixty-five years of age or older .....	\$ 15.50
4. Hunting, fishing, and fur harvesting combined licenses:	
a. Annual fur, fish and game license for residents .....	\$ 28.50
5. Fur harvesters, dealers and game breeders licenses:	
a. Fur harvester license for legal residents sixteen years of age or older .....	\$ 15.50
b. Fur harvester license for legal residents under sixteen years of age .....	\$ 2.50
c. Fur harvester license for nonresidents .....	\$150.50
d. Fur dealers license for residents .....	\$200.00
e. Fur dealers license for nonresidents .....	\$400.00
f. Location permit for resident fur dealers .....	\$ 25.00
g. Location permit for nonresident fur dealers .....	\$ 50.00
h. Game breeders license .....	\$ 10.00
6. Other licenses:	
a. Scientific collector's license .....	\$ 2.00
b. Private fish hatcheries .....	\$ 10.00
c. Bait dealer's license for residents .....	\$ 25.00
d. Bait dealer's license for nonresidents .....	\$ 50.00
e. Taxidermy license .....	\$ 10.00
f. Falconry license .....	\$ 10.00
g. Nongame support certificate .....	\$ 5.00
h. Special wildlife habitat stamp .....	\$ 5.00

89 Acts, ch 237, §1 HF 88; 89 Acts, ch 90, §2 HF 480; 89 Acts, ch 238, §1 HF 124  
 Subsection 2, NEW paragraphs e and f  
 Subsection 5, NEW paragraphs f and g and existing paragraph f relettered as h  
 Subsection 6, paragraph h amended

**110.7 Wild turkey license and tag.**

1. A resident hunting wild turkey who is required to have a license must have a resident hunting license or combined hunting and fishing license or fur, fish and game license and a wildlife habitat stamp in addition to the wild turkey hunting license.

2. The wild turkey hunting license shall be accompanied by a tag designed to be used only once and separable into two parts. If a wild turkey is taken, the wild turkey shall be tagged with one part of the tag and both parts of the tag should be dated.

3. A nonresident hunting wild turkey is required to have only a nonresident wild turkey hunting license and a wildlife habitat stamp. The commission shall limit to five hundred licenses the number of nonresidents allowed to have wild turkey hunting licenses for the year 1989 and establish application procedures. For subsequent years, the number of nonresident wild turkey hunting licenses shall be determined as provided in section 109.38. The commission shall allocate the nonresident wild turkey hunting licenses issued among the zones based on the populations of wild turkey, but nonresident wild turkey hunting licenses shall not be issued for a zone that has an estimated wild turkey population of less than one hundred ten percent of the minimum population required for a biological balance to exist. The hunting zones for wild turkey shall be the same as for deer. A nonresident applying for a wild turkey hunting license must exhibit proof of having successfully completed a hunter safety and ethics education program as provided in section 110.27 or its equivalent as determined by the department before the license is issued.

### 110.8 Deer license and tag.

1. A resident hunting deer who is required to have a hunting license must have a resident hunting license or resident combined hunting and fishing license or a fur, fish and game license and a wildlife habitat stamp in addition to the deer hunting license.

2. The deer hunting license shall be accompanied by a tag designed to be used only once and separable into two parts. When a deer is taken, the deer shall be tagged with one part of the tag and both parts of the tag shall be dated.

3. A nonresident hunting deer is required to have only a nonresident deer license and a wildlife habitat stamp. The commission shall limit to one thousand licenses the number of nonresidents allowed to have deer hunting licenses for the year 1989 and establish application procedures. For subsequent years, the number of nonresident deer hunting licenses shall be determined as provided in section 109.38. The commission shall allocate the nonresident deer hunting licenses issued among the zones based on the populations of deer, but nonresident deer hunting licenses shall not be issued for a zone that has an estimated deer population of less than one hundred ten percent of the minimum population required for a biological balance to exist. A nonresident applying for a deer hunting license must exhibit proof of having successfully completed a hunter safety and ethics education program as provided in section 110.27 or its equivalent as determined by the department before the license is issued.

89 Acts, ch 237, §3 HF 88  
NEW subsection 3

### 110.24 When license not required—special licenses.

1. Owners or tenants of land, and their juvenile children, may hunt, fish or trap upon such lands and may shoot by lawful means ground squirrels, gophers, or woodchucks upon adjacent roads without securing a license so to do; except, special licenses to hunt deer and wild turkey shall be required of owners and tenants but they shall not be required to have a special wild turkey hunting license to hunt wild turkey on a game breeding and shooting preserve licensed under chapter 110A.

2. Upon written application, the department shall issue annually a deer or wild turkey hunting license, or both, to the owner of a farm unit or a member of the family of the farm owner and to the tenant or a member of the family of the tenant.

3. The deer or wild turkey hunting permit shall be valid only for hunting on the farm unit upon which the licensee to whom it is issued resides.

4. An owner of a farm unit or a member of the owner's family who resides with the owner and a tenant or a member of the tenant's family who resides with the tenant, who do not reside on the farm unit but who are actively engaged in farming the farm unit, are also eligible for a free deer license and a wild turkey license as provided in this section. The licenses are valid for hunting on the farm unit only. This paragraph applies to Iowa residents actively engaged in the operation of the farm units.

5. The application required for the deer or wild turkey hunting license shall be on forms furnished by the commission and shall be without fee.

6. Deer and wild turkey hunting licenses issued under this section are subject to all other provisions of the laws and regulations pertaining to the taking of deer and wild turkey. The deer license and turkey license shall be the equivalent of the least restrictive license issued under section 109.38.

7. As used in this section a "farm unit" is all the parcels of land, not necessarily contiguous, which are operated as a unit for agricultural purposes and which are under the lawful control of the landowner or tenant, and a "tenant" is a person, other than the landowner or landowner's family, who resides on the farm unit and is actively engaged in the operation of the farm unit.

8. A resident of the state under sixteen years of age or a nonresident of the state under fourteen years of age is not required to have a license to fish in the waters of the state. However, residents under sixteen years of age and nonresidents under fourteen years of age must possess a valid trout stamp to possess trout or they must fish for trout with a licensed adult who possesses a valid trout stamp and limit their combined catch to the daily limit established by the commission.

9. No license shall be required of minor pupils of the state school for the blind, state school for the deaf, nor of minor residents of other state institutions under the control of a director of a division of the department of human services, nor shall any person who is on active duty with the armed forces of the United States, on authorized leave, and a legal resident of the state of Iowa, be required to have a license to hunt or fish in this state. No license shall be required of residents of county care facilities or any person who is receiving old-age assistance under chapter 249.

10. A resident of the state under sixteen years of age is not required to have a hunting license to hunt game if accompanied by the minor's parent or guardian or in company with any other competent adult with the consent of the minor's parent or guardian, if the person accompanying the minor possesses a valid hunting license; however, there must be one licensed adult accompanying each person under sixteen years of age. The minor must have a deer hunting license to hunt deer and a wild turkey hunting license to hunt wild turkey.

11. A person having a dog entered in a licensed field trial is not required to have a hunting license or fur harvester license to participate in the event or to exercise the person's dog on the area on which the field trial is to be held during the twenty-four hour period immediately preceding the trial.

12. The commission shall issue without charge a special fishing license to residents of Iowa sixteen years or more of age who the commission finds are mentally or physically severely handicapped. The commission is hereby authorized to prepare an application to be used by the person requesting handicapped status, which would require that the person's attending physician sign the form declaring the person handicapped and eligible for exempt status.

13. No person shall be required to have a special wild turkey license to hunt wild turkey on a game breeding and shooting preserve licensed under chapter 110A.

14. A lessee of a camping space at a campground may fish on a private lake or pond on the premises of the campground without a license if the lease confers an exclusive right to fish in common with the rights of the owner and other lessees.

15. The department may issue a permit, subject to conditions established by the department, which authorizes patients of a substance abuse facility, residents of health care facilities licensed under chapter 135C, and persons cared for in juvenile shelter care homes as provided for in chapter 232 to fish without a license as a supervised group.

89 Acts, ch 87, §2, 3 HF 6; 89 Acts, ch 74, §1 HF 665

Former unnumbered paragraph 2 and subsections 1-4 stricken and unnumbered paragraphs numbered as subsections

Subsection 2 rewritten

NEW subsection 4

Subsection 15 amended

### **110.28 Use of nonresident deer and wild turkey hunting license fees.**

The revenue received from the nonresident deer and wild turkey hunting license fees shall be used to employ and maintain additional full-time conservation officers. During the first fiscal year that nonresident deer and wild turkey licenses are sold, the department shall employ the number of new full-time conservation officers which can be employed from the revenue received. For each subsequent fiscal year if revenues are sufficient, the department shall employ an additional new full-time conservation officer until there is at least one full-time conservation officer assigned to each county. Any moneys remaining after the employment of

the additional full-time conservation officers shall be used to pay overtime to the full-time conservation officers.

89 Acts, ch 237, §5 HF 88  
NEW section

#### **110.29 Reciprocity for deer and wild turkey hunting fees.**

A nonresident may purchase a nonresident deer or wild turkey hunting license to hunt in this state for the same fee as a resident of this state may purchase a nonresident deer or wild turkey hunting license to hunt in the state where the nonresident resides. However, the nonresident deer hunting and wild turkey hunting fees shall not be less than the fees specified in section 110.1, subsection 2, paragraphs "e" and "f". The minimum nonresident wild turkey hunting and deer hunting fees apply to nonresidents of states which do not offer nonresident wild turkey hunting or nonresident deer hunting licenses to residents of this state.

89 Acts, ch 237, §4 HF 88  
NEW section

**110.30 and 110.31** Reserved.

## CHAPTER 111

### PUBLIC LANDS AND WATERS

**111.85 User permits for certain state lands.** Repealed by 89 Acts, ch 311, §35, HF 778

Collection and use of moneys in trust fund; 89 Acts, ch 311, §35 HF 778

## CHAPTER 111A

### COUNTY CONSERVATION BOARD

#### **111A.4 Powers and duties.**

The county conservation board shall have the custody, control and management of all real and personal property heretofore or hereafter acquired by the county for public museums, parks, preserves, parkways, playgrounds, recreation centers, county forests, county wildlife areas, and other county conservation and recreation purposes and is authorized and empowered:

1. To study and ascertain the county's museum, park, preserve, parkway, and recreation and other conservation facilities, the need for such facilities, and the extent to which such needs are being currently met, and to prepare and adopt a co-ordinated plan of areas and facilities to meet such needs.

2. To acquire in the name of the county by gift, purchase, lease, agreement, exchange, or otherwise, in fee or with conditions, suitable real estate within or without the territorial limits of the county for public museums, parks, preserves, parkways, playgrounds, recreation centers, forests, wildlife, and other conservation purposes and for participation in watershed, drainage, and flood control programs for the purpose of increasing the recreational resources of the county. The natural resource commission, the county board of supervisors, or the governing body of any city, upon request of the county conservation board, may transfer to the county conservation board for use as museums, parks, preserves, parkways, playgrounds, recreation centers, play fields, tennis courts, skating rinks, swimming pools, gymnasiums, rooms for arts and crafts, camps and meeting places, community forests, wildlife areas, and other recreational purposes, any land and buildings owned or controlled by the department of natural

resources or the county or city and not devoted or dedicated to any other inconsistent public use. In acquiring or accepting land, due consideration shall be given to its scenic, historic, archaeological, recreational, or other special features, and land shall not be acquired or accepted unless, in the opinion of the board, it is suitable or, in the case of exchange, is suitable and of substantially the same value as the property exchanged from the standpoint of its proposed use. An exchange of property approved by the county conservation board and the board of supervisors is not subject to section 331.361, subsection 2.

3. The county conservation board shall file with the natural resource commission all acquisitions or exchanges of land within one year.

4. To plan, develop, preserve, administer and maintain all such areas, places and facilities, and construct, reconstruct, alter and renew buildings and other structures, and equip and maintain the same.

5. To accept in the name of the county gifts, bequests, contributions and appropriations of money and other personal property for conservation purposes.

6. To employ and fix the compensation of a director who shall be responsible to the county conservation board for the carrying out of its policies. The director, subject to the approval of the board, may employ and fix the compensation of assistants and employees as necessary for carrying out this chapter.

7. To charge and collect reasonable fees for the use of the parks, facilities, privileges and conveniences as may be provided and for admission to amateur athletic contests, demonstrations and exhibits, and other noncommercial events. The board shall not allow the exclusive use of a park by one or more organizations.

8. To operate concessions or to lease concessions and to let out and rent privileges in or upon any property under its control upon such terms and conditions as are deemed by it to be in the public interest.

9. To participate in watershed projects of soil conservation districts and the federal government and in projects of drainage districts organized under the provisions of chapters 455, 457, 461, 466 and 467C for the purpose of increasing the recreational resources of the county.

Any agreement for such participation by or with a board of supervisors or trustees concerning drainage districts shall be in writing, shall be duly adopted by a resolution of the board of supervisors or trustees and shall be spread in its entirety upon the permanent records of the drainage district or districts affected.

10. To furnish suitable uniforms for the director and those employees as the director may designate to wear uniforms, when on official duty. The cost of the uniforms shall not exceed three hundred dollars per person in any year. The uniforms shall at all times remain the property of the county.

89 Acts, ch 191, §1 HF 141; 89 Acts, ch 239, §1 HF 166  
Subsections 2 and 3 amended  
Subsection 7 amended

#### **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 upon all property under its

control within and without the county. The board may grant the director and those employees of the board designated as police officers the authority to enforce the provisions of chapters 106, 109, 110, 111, and 321G on land not under the control of the board within the county.

89 Acts, ch 88, §1 HF 165  
Section amended

#### **111A.12 Iowa's county beautification program.**

1. A county conservation board may establish an Iowa's county beautification program to encourage the prevention and cleanup of litter in public areas of the county. The county conservation director shall prepare and implement the program which is designed to employ persons from fourteen years of age to eighteen years of age in a six-week summer program. The program may include public informational activities, but shall be directed primarily toward encouraging and facilitating involvement in litter prevention and cleanup. The program shall also include weekly instruction on safety in the workplace while employed with an Iowa's county beautification program. Financial assistance for an Iowa's county beautification program may be received through the county conservation account pursuant to section 455A.19. County matching funds shall not be required for eligibility for funding an Iowa's county beautification program.

2. A county conservation board shall coordinate its Iowa's county beautification program with the county engineer or director of the county secondary road department and with the district highway engineer of the state department of transportation. The respective county and state highway authorities, within time and budgetary limitations, shall cooperate with the county conservation board in implementing the litter program in regard to the rights-of-way of primary and secondary roads when requested by the county conservation board.

89 Acts, ch 236, §10 HF 769  
NEW section

## **CHAPTER 116**

### **PUBLIC ACCOUNTANTS**

#### **116.3 Accountancy examining board created—funds—reports—rules.**

1. An accountancy examining board is created within the professional licensing and regulation division of the department of commerce. The board consists of eight members, five of whom shall be certified public accountants, one of whom shall be a licensed accounting practitioner, and two of whom shall not be certified public accountants or licensed accounting practitioners and shall represent the general public. A certified or licensed member shall be actively engaged in practice as a certified public accountant or accounting practitioner and shall have been so engaged for five years preceding appointment, the last two of which shall have been in Iowa. Professional associations or societies composed of certified public accountants or licensed accounting practitioners may recommend the names of potential board members to the governor. However, the governor is not bound by the recommendations. A board member shall not be required to be a member of any professional association or society composed of certified public accountants or licensed accounting practitioners. Members shall be appointed by the governor to staggered terms, subject to confirmation by the senate.

As used in this chapter, "board" means the accountancy examining board established by this section. Upon the expiration of each term, a successor shall be appointed for a term of three years beginning and ending as provided in section 69.19. Members shall serve a maximum of three terms or nine years, whichever is less. Vacancies occurring in the membership of the board for any cause shall be

filled in the same manner as original appointments are made by the governor, for the unexpired term and subject to senate confirmation. The public members of the board shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers.

A member of the board whose term has expired shall continue to serve until the member's successor is appointed and qualified.

The governor shall remove from the board any member whose certificate as a certified public accountant has been revoked or suspended.

2. The board shall elect annually a chairperson, a secretary, and a treasurer from its members.

The board shall meet as often as deemed necessary, but shall hold at least one meeting per year at the location of the board's principal office.

The board may adopt regulations for the orderly conduct of its affairs and for the administration of this chapter.

A majority of the members of the board shall constitute a quorum for the transaction of business.

The board shall keep records of its proceedings, and in any proceeding in court arising out of or founded upon any provision of this chapter, copies of its records certified as correct shall be admissible in evidence to prove the contents of the records.

The administrator of the professional licensing and regulation division of the department of commerce shall hire and provide for staff to assist the board with implementing this chapter.

A member of the board is entitled to be reimbursed for actual expenses incurred in the discharge of official duties. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

3. All fees and other moneys received by the board, pursuant to the provisions of this chapter, shall be paid monthly to the treasurer of state.

The board shall make a biennial report to the governor of its proceedings, with an account of all moneys received and disbursed, a list of the names of certified public accountants, public accountants, and accounting practitioners whose certificates, permits to practice, or licenses have been revoked or suspended, and such other information as it may deem proper or the governor requests.

4. The board may promulgate rules of professional conduct appropriate to establishing and maintaining high standards of integrity and dignity in the practice as a certified public accountant, public accountant, or accounting practitioner. Rules shall be adopted relating to the following matters:

a. Rules relating to the propriety of opinions on financial statements by a certified public accountant or public accountant who is not independent.

b. Actions discreditable to the practice as a certified public accountant, public accountant, or accounting practitioner.

c. Rules relating to the professional confidences between a certified public accountant, public accountant, or accounting practitioner and a client.

d. Contingent fees.

e. Rules relating to technical competence and the expression of opinions on financial statements.

f. Rules relating to the failure to disclose a material fact known to the certified public accountant or public accountant, or accounting practitioner.

g. Rules relating to material misstatement known to the certified public accountant, public accountant, or accounting practitioner.

h. Rules relating to negligent conduct in an examination or in making a report on an examination.

i. Rules relating to the failure to direct attention to any material departure from generally accepted accounting principles.

5. A certified public accountant, public accountant, or accounting practitioner shall not commit and shall not permit associates or persons who are under the accountant's or practitioner's supervision to commit any of the following acts:

a. Pay a commission, brokerage, or other participation in the fees or profits of professional work directly or indirectly to the laity.

b. Directly or indirectly accept commission, brokerage, or other participation in the fees, charges or profits of work recommended or turned over to the laity as incident to services for clients.

c. Permit others to carry out on behalf of the accountant or practitioner, either with or without compensation, acts which, if carried out by the accountant or practitioner, would place that person in violation of rules of the board adopted pursuant to this chapter.

6. The board shall establish rules relative to the conduct of practice as a certified public accountant, public accountant, and accounting practitioner in respect to the enumerated items in subsections 4 and 5, but such direction shall not be construed as a limitation upon the rights of the board to make and adopt any rules and regulations relating to the rules of conduct of certified public accountants, public accountants, or accounting practitioners, which are not specifically enumerated in this chapter.

7. The board may issue further rules and regulations, including but not limited to rules of professional conduct, pertaining to corporations practicing public accounting, which it deems consistent with or required by the public welfare. The board may prescribe rules governing the style, name, and title of corporations and governing the affiliation of corporations with other organizations.

Regulations adopted by the board shall not be in conflict with the Iowa Professional Corporation Act, provided in chapter 496C.

89 Acts, ch 56, §1 HF 698

Transition provisions; 89 Acts, ch 56, §4

Subsection 1, unnumbered paragraphs 1 and 2 amended

**116.9 Advisory committee.** Repealed by 89 Acts, ch 56, §3. HF 698

### **116.11 Examinations.**

Each applicant for a license to practice as an accounting practitioner shall pay to the board an examination fee before being examined. The amount of the fee shall be set by the board based upon the annual cost of administering the examination.

Examinations shall be conducted by the board as often as deemed necessary, but not less than one time per year.

The examination shall be prescribed by the board and shall be designed and given in a manner as to fairly test the applicant's knowledge of accounting. The examination shall not include questions relating to the subject of auditing.

The board shall make use of all or any part of standard or uniform examinations and advisory grading services which are provided or furnished by national accounting organizations or societies as the board deems appropriate to assist it in performing its duties as provided in this chapter. All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded.

If an applicant has partially passed an examination given in another state, under requirements which the board finds to be substantially equivalent to those required in examinations given in this state, the results of the other state examination shall be accepted as though given in this state.

Every applicant successfully passing all subjects in which examined shall be granted and issued a license as an accounting practitioner by the board. The cost of the license shall be based upon the administrative costs of the board and advisory committee and the costs of issuing the license.

An applicant who fails the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board. An applicant who passes a portion of the examination shall have the right to be re-examined in the remaining subjects at a future examination, and if the applicant passes in the remaining subjects, the applicant shall be considered to have passed the entire examination. 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 such other information concerning the applicant's examination results which are available to the board.

89 Acts, ch 56, §2 HF 698  
Unnumbered paragraph 3 stricken and rewritten

## CHAPTER 117

### REAL ESTATE BROKERS AND SALESPERSONS

#### **117.8 Real estate commission created—staff.**

A real estate commission is created within the professional licensing and regulation division of the department of commerce. The commission consists of three members licensed under this chapter and two members not licensed under this chapter and who shall represent the general public. At least one of the licensed members shall be a licensed real estate salesperson, except that if the licensed real estate salesperson becomes a licensed real estate broker during a term of office, that person may complete the term, but is not eligible for reappointment on the commission as a licensed real estate salesperson. A licensed member shall be actively engaged in the real estate business and shall have been so engaged for five years preceding the appointment, the last two of which shall have been in Iowa. Professional associations or societies of real estate brokers or real estate salespersons may recommend the names of potential commission members to the governor. However, the governor is not bound by their recommendations. A commission member shall not be required to be a member of any professional association or society composed of real estate brokers or salespersons. Commission members shall be appointed by the governor subject to confirmation by the senate. Appointments shall be for three-year terms and shall commence and end as provided in section 69.19. A member shall serve no more than three terms or nine years, whichever is less. No more than one member shall be appointed from a county. A commission member shall not hold any other elective or appointive state or federal office. Vacancies shall be filled for the unexpired term by appointment of the governor and are subject to senate confirmation. A majority of the commission members constitutes a quorum. The administrator of the professional licensing and regulation division shall hire and provide staff to assist the commission with implementing this chapter.

The administrator of the professional licensing and regulation division of the department of commerce shall hire a real estate education director to assist the commission in administering education programs for the commission.

89 Acts, ch 292, §1 HF 764  
NEW unnumbered paragraph 2

#### **117.14 Fees and expenses.**

All fees and charges collected by the real estate commission under this chapter shall be paid into the general fund in the state treasury, except that the

equivalent of ten dollars per year of the fees for each real estate salesperson's or broker's license shall be paid into the Iowa real estate education fund created in section 117.54. All expenses incurred by the commission under this chapter, including compensation of staff assigned to the commission, shall be paid out of the general fund in the state treasury, except for expenses incurred and compensation paid for the real estate education director, which shall be paid out of the real estate education fund.

89 Acts, ch 292, §2 HF 764

Commission to increase fees for deposit in real estate education fund; 89 Acts, ch 292, §6 HF 764  
Section amended

### 117.27 Fees.

The real estate commission shall set fees, for examination and licensing of real estate brokers and real estate salespersons. The commission shall determine the annual cost of administering the examination and shall set the examination fee accordingly. The commission shall set the fees for the real estate broker's licenses and for real estate salesperson's licenses based upon the administrative costs of sustaining the commission. The fees shall include, but shall not be limited to, the costs for:

1. Per diem, expenses, and travel for commission members.
2. Office facilities, supplies, and equipment.
3. Director, assistants, and clerical assistance.
4. Establishing and maintaining a real estate education program.

89 Acts, ch 292, §3 HF 764

NEW subsection 4

### 117.34 Investigations by commission.

The real estate commission may upon its own motion and shall upon the verified complaint in writing of any person, if the complaint together with evidence, documentary or otherwise, presented in connection with the complaint makes out a prima-facie case, request the department of inspections and appeals to investigate the actions of any real estate broker, real estate salesperson, or other person who assumes to act in either capacity within this state, and may suspend or revoke a license issued under this chapter at any time if the licensee has by false or fraudulent representation obtained a license, or if the licensee is found to be guilty of any of the following:

1. Making any substantial misrepresentation.
2. Making any false promise of a character likely to influence, persuade or induce.
3. Pursuing a continued and flagrant course of misrepresentation, or making of false promises through agents or salespersons or advertising or otherwise.
4. Acting for more than one party in a transaction without the knowledge of all parties for whom the licensee acts.
5. Accepting a commission or valuable consideration as a real estate broker associate or salesperson for the performance of any of the acts specified in this chapter, from any person, except the broker associate's or salesperson's employer, who must be a licensed real estate broker. However, a broker associate or salesperson may, without violating this subsection, accept a commission or valuable consideration from a corporation which is wholly owned, or owned with a spouse, by the broker associate or salesperson if the conditions described in subsection 9 are met.
6. Representing or attempting to represent a real estate broker other than the licensee's employer, without the express knowledge and consent of the employer.
7. Failing, within a reasonable time, to account for or to remit any moneys coming into the licensee's possession which belong to others.
8. Being unworthy or incompetent to act as a real estate broker or salesperson in such manner as to safeguard the interests of the public.

9. Paying a commission or any part of a commission for performing any of the acts specified in this chapter to a person who is not a licensed broker or salesperson under this chapter or who is not engaged in the real estate business in another state. However, a broker may pay a commission to a corporation which is wholly owned, or owned with a spouse, by a salesperson or broker associate employed by or otherwise associated with the broker, if all of the following conditions are met:

a. The corporation does not engage in real estate transactions as a third-party agent or in any other activity requiring a license under this chapter.

b. The employing broker is not relieved of any obligation to supervise the employed licensee or any other requirement of this chapter or the rules adopted pursuant to this chapter.

c. The employed broker associate or salesperson is not relieved from any personal civil liability for any licensed activities by interposing the corporate form.

10. Failing, within a reasonable time, to provide information requested by the commission as the result of a formal or informal complaint to the commission which would indicate a violation of this chapter.

11. Any other conduct, whether of the same or different character from that specified in this section, which demonstrates bad faith, or improper, fraudulent, or dishonest dealings which would have disqualified the licensee from securing a license under this chapter.

Any unlawful act or violation of any of the provisions of this chapter by any real estate broker associate or salesperson, employee, or partner or associate of a licensed real estate broker, is not cause for the revocation of the license of any real estate broker, unless the commission finds that the real estate broker had guilty knowledge of the unlawful act or violation.

89 Acts, ch 29, §1 HF 380; 89 Acts, ch 83, §24 SF 112  
Subsections 5, 9 and 11 amended

### **117.54 Real estate education fund.**

The Iowa real estate education fund is created as a financial assurance mechanism to assist in the establishment and maintenance of a real estate education program at the university of northern Iowa and to assist the real estate commission in providing an education director. The fund is created as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund, but shall remain in the Iowa real estate education fund. Interest or other income earned by the fund shall be deposited in the fund. Seventy percent of the moneys in the fund shall be distributed and are appropriated to the board of regents for the purpose of establishing and maintaining a real estate education program at the university of northern Iowa. Thirty percent of the moneys in the fund shall be distributed and are appropriated to the professional licensing and regulation division of the department of commerce for the purpose of hiring and compensating a real estate education director.

89 Acts, ch 292, §4 HF 764  
NEW section

## CHAPTER 117B

### REAL ESTATE APPRAISALS AND APPRAISERS

#### 117B.1 Short title.

This chapter shall be known and may be cited as the “*Iowa Voluntary Appraisal Standards and Appraiser Certification Law*”.

89 Acts, ch 290, §1 HF 790  
NEW section

#### 117B.2 Definitions.

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

1. “*Appraisal*” or “*real estate appraisal*” means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate. An appraisal may be classified by subject matter into either a valuation or an analysis. A “*valuation*” is an estimate of the value of real estate or real property. An “*analysis*” is a study of real estate or real property other than estimating value.

2. “*Appraisal assignment*” means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting as a disinterested third party in rendering an appraisal, valuation, or analysis.

3. “*Appraisal foundation*” means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987.

4. “*Appraisal report*” means any written communication of an appraisal.

5. “*Associate real estate appraiser*” means a person who may not yet fully meet the requirements for certification but who is providing significant input into the appraisal development under the direction of a certified appraiser.

6. “*Board*” means the real estate appraiser examining board established pursuant to this chapter.

7. “*Certified appraisal or certified appraisal report*” means an appraisal or appraisal report given or signed and certified as an appraisal or appraisal report by an Iowa certified real estate appraiser.

8. A “*certified real estate appraiser*” means a person who develops and communicates real estate appraisals and who holds a current, valid certificate for appraisals of types of real estate which may include residential, commercial, or rural real estate, as may be established under this chapter.

9. “*Review appraiser*” means a person who is responsible for the administrative approval of the appraised value of real property or assures that appraisal reports conform to the requirements of law and policy, or that the value of real property estimated by appraisers represents adequate security, fair market value, or other defined value.

10. “*Specialized services*” means a hypothetical or other special valuation, or an analysis or an appraisal which does not fall within the definition of an appraisal assignment.

89 Acts, ch 290, §2 HF 790  
NEW section

#### 117B.3 Purposes—voluntary certification.

The purpose of this chapter is to establish standards for real estate appraisals and a procedure for the voluntary certification of real estate appraisers.

A person who is not a certified real estate appraiser under this chapter may appraise real estate for compensation if certification is not required by this chapter or by federal or state law, rule, or policy.

89 Acts, ch 290, §3 HF 790  
NEW section

#### 117B.4 Iowa real estate appraiser board.

A real estate appraiser examining board is established within the professional licensing and regulation division of the department of commerce. The board

consists of seven members, two of whom shall be public members and five of whom shall be real estate appraisers.

1. The governor shall appoint the members of the board who are subject to confirmation by the senate. The governor may remove a member for cause.

2. Appointees shall possess or maintain at least those standards of ethics, education, and experience required by federal regulations.

3. Each real estate appraiser member of the board appointed after January 1, 1992, must be a certified real estate appraiser. The governor shall attempt to represent each class of certified appraisers in making the appointments.

4. The term of each member is three years; except that, of the members first appointed, two shall be appointed for two years and two shall be appointed for one year.

5. Upon expiration of their terms, members of the board shall continue to hold office until the appointment and qualification of their successors. A person shall not serve as a member of the board for more than two consecutive terms.

6. The public members of the board shall not engage in the practice of real estate appraising.

7. The board shall meet at least once each calendar quarter to conduct its business.

8. The members of the board shall elect a chairperson from among the members to preside at board meetings.

9. A quorum of the board is four members. At least three of the four members shall be appraiser members.

89 Acts, ch 290, §4 HF 790  
NEW section

#### **117B.5 Powers of the board.**

1. The board shall adopt rules establishing uniform appraisal standards and appraiser certification requirements and other rules necessary to administer and enforce this chapter and its responsibilities under chapter 258A. The board shall consider and may incorporate any standards recommended by the appraisal foundation, or by a professional appraisal organization, or by a public authority or organization responsible to review appraisals or for the oversight of appraisers.

2. The uniform appraisal standards shall meet all of the following requirements:

a. Require compliance with federal law and appraisal standards adopted by federal authorities as they apply to federally covered transactions.

b. Develop standards for the scope of practice for certified real estate appraisers.

3. Appraiser certification requirements shall require a demonstration that the applicant has a working knowledge of current appraisal theories, practices, and techniques which will provide a high degree of service and protection to members of the public dealt with in a professional relationship under authority of the certification. The board shall establish the examination specifications for each category of certified real estate appraiser, provide or procure appropriate examinations, establish procedures for grading examinations, receive and approve or disapprove applications for certification, and issue certificates.

4. The board shall maintain a registry of the names and addresses of appraisers certified under this chapter and retain records and application materials submitted to the board.

89 Acts, ch 290, §5 HF 790  
NEW section

#### **117B.6 Fees.**

1. The board shall establish and collect fees for certification, examination, reexamination, renewal of certification, and delinquency at an amount necessary

to pay the administrative costs of sustaining the board and implementing this chapter. The fees shall include, but are not limited to, amounts to cover the costs for the following items:

- a. Per diem, expenses, and travel expenses for board members, peer review committee persons, or disciplinary panel members.
  - b. Salary, per diem, and expenses of an executive secretary, assistants, and employees.
  - c. Office facilities, supplies, and equipment.
2. Fees collected by the board shall be transmitted to the treasurer of state who shall deposit the fees in the general fund of the state.

89 Acts, ch 290, §6 HF 790  
NEW section

### **117B.7 Certification process.**

1. Applications for original certification, renewal certification, and examinations shall be made in writing to the board on forms approved by the board.
2. Until the board has adopted final rules to implement this chapter, the board may issue interim annual certification to qualified applicants. No interim annual certifications may be issued or renewed following the publication of final certification rules by the board.

89 Acts, ch 290, §7 HF 790  
NEW section

### **117B.8 Examination requirement.**

An original certification as a certified real estate appraiser shall not be issued to a person who has not demonstrated through a written examination that the person possesses the following knowledge and understanding:

1. Appropriate knowledge of technical terms commonly used in or related to real estate appraising, appraisal report writing, and economic concepts applicable to real estate.
2. Understanding of the principles of land economics, real estate appraisal processes, and problems likely to be encountered in gathering, interpreting, and processing data in carrying out appraisal assignments.
3. Knowledge of theories of depreciation, cost estimating, methods of capitalization, and the mathematics of real estate appraisal that are appropriate for each classification of certificate applied for.
4. Knowledge of other appropriate principles and procedures for the classifications applied for.
5. Basic understanding of Iowa real estate, property tax, and eminent domain laws.
6. Understanding of the types of misconduct for which disciplinary proceedings may be initiated against a certified real estate appraiser.

89 Acts, ch 290, §8 HF 790  
NEW section

### **117B.9 Education and experience requirement.**

The board shall determine what real estate appraisal or real estate appraisal review experience and what education shall be required to provide appropriate assurance that an applicant for certification is competent to perform the certified appraisal work which is within the scope of practice defined by the board. The board shall prescribe a required minimum number of tested hours of education relating to the provisions of this chapter, the uniform appraisal standards, and other rules issued in accordance with this chapter.

89 Acts, ch 290, §9 HF 790  
NEW section

### **117B.10 Nonresident certification.**

1. An applicant for certification as a real estate appraiser who is not a resident of Iowa shall submit, with the application for certification, an irrevocable consent

that service of process upon the applicant may be made by delivery of the process to the secretary of state if, in an action against the applicant in a court of this state arising out of the applicant's activities as a certified real estate appraiser, the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant.

2. A nonresident of Iowa who has complied with subsection 1 may obtain a certificate as a certified real estate appraiser by complying with the certification requirements in this chapter.

89 Acts, ch 290, §10 HF 790  
NEW section

#### **117B.11 Nonresident certification by reciprocity.**

If, in the determination by the board, another state is deemed to have substantially equivalent certification requirements, an applicant who is certified under the laws of the other state may obtain a certificate as a certified real estate appraiser upon terms and conditions as determined by the board.

89 Acts, ch 290, §11 HF 790  
NEW section

#### **117B.12 Basis for denial.**

The board may deny the issuance of a certificate as a certified real estate appraiser to an applicant on any of the grounds listed in this chapter or in chapter 258A.

89 Acts, ch 290, §12 HF 790  
NEW section

#### **117B.13 Principal place of business.**

1. Each certified real estate appraiser shall advise the board of the address of the appraiser's principal place of business and all other addresses at which the appraiser is currently engaged in the business of preparing real estate appraisal reports.

2. When a certified real estate appraiser changes the appraiser's principal place of business, the appraiser shall immediately give written notification of the change to the board and apply for an amended certificate.

3. Each certified real estate appraiser shall notify the board of the appraiser's current residence address. Residence addresses on file with the board are exempt from disclosure as public records.

89 Acts, ch 290, §13 HF 790  
NEW section

#### **117B.14 Certificate.**

A certificate issued under this chapter shall bear the signatures or facsimile signatures of the members of the board and a certificate number assigned by the board.

89 Acts, ch 290, §14 HF 790  
NEW section

#### **117B.15 Use of term.**

1. The term "*certified real estate appraiser*" shall only be used to refer to individuals who hold the certificate and shall not be used in connection with or as part of the name or signature of a firm, partnership, corporation, or group, or in a manner that it may be interpreted as referring to a firm, partnership, corporation, group, other business entity, or anyone other than an individual holder of the certificate.

2. The term "*associate real estate appraiser*" shall only be used to refer to individuals who do not yet fully meet the requirements for certification but who provide significant input into the appraisal development under the direction of a certified appraiser.

3. A certificate shall not be issued under this chapter to a firm, corporation, partnership, group, or other business entity.

89 Acts, ch 290, §15 HF 790  
NEW section

#### **117B.16 Continuing education.**

1. As a prerequisite to renewal of a certification, a certified real estate appraiser shall present evidence satisfactory to the board of having met continuing education requirements.

2. The basic continuing education requirement for renewal of certification shall be the completion, during the immediately preceding term, of the number of classroom hours of instruction required by the board in courses or seminars which have received the approval of the board.

89 Acts, ch 290, §16 HF 790  
NEW section

#### **117B.17 Disciplinary proceedings.**

1. The rights of a holder of a certificate as a certified real estate appraiser may be revoked or suspended, or the holder may be otherwise disciplined in accordance with this chapter. The board may investigate the actions of a certified real estate appraiser and may revoke or suspend the rights of a holder or otherwise discipline a holder for violation of a provision of this chapter, or chapter 258A, or of a rule adopted under this chapter or commission of any of the following acts or omissions:

a. Procurement or attempt to procure a certificate under this chapter by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification, or participating in any form of fraud or misrepresentation.

b. Failure to meet the minimum qualifications established by this chapter.

c. A conviction, including a conviction based upon a plea of guilty or nolo contendere, of a crime which is substantially related to the qualifications, functions, and duties of a person developing real estate appraisals and communicating real estate appraisals to others.

d. Violation of any of the standards for the development or communication of real estate appraisals as provided in this chapter.

e. Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.

f. Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal.

g. Willful disregard or violation of a provision of this chapter or a rule of the board of the administration and enforcement of this chapter.

2. In a disciplinary proceeding based upon a civil judgment a certified real estate appraiser shall be given an opportunity to present matters in mitigation and extenuation, but not to collaterally attack the civil judgment.

3. Notwithstanding the limitations of section 258A.3, subsection 2, paragraph "e", the board shall adopt a rule providing for civil penalties in amounts and for the reasons authorized by federal law where federal law requires the board to have the authority to impose the civil penalties in order to obtain or to retain the board's designation as a qualified state appraiser certifying agency.

89 Acts, ch 290, §17 HF 790  
NEW section

#### **117B.18 Standards of practice.**

1. A certified real estate appraiser shall comply with the uniform appraisal standards adopted under this chapter.

2. A certified real estate appraiser shall not accept an appraisal assignment or a fee for an appraisal assignment if the employment itself is contingent upon the appraiser reporting a predetermined estimate, analysis, or opinion or if the fee to be paid is contingent upon the opinion, conclusion, or valuation reached, or upon the consequences resulting from the appraisal assignment.

3. A certified real estate appraiser may provide specialized services to facilitate the client's or employer's objectives. Specialized services shall not be communicated as a certified appraisal or as a certified appraisal report. Regardless of the intention of the client or employer, if the appraiser would be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased analysis or opinion or conclusion, the work is an appraisal assignment rather than an assignment for specialized services. Communication of a valuation under oath is an appraisal assignment.

4. A certified real estate appraiser who enters into an agreement to perform specialized services may be paid a fixed fee or a fee that is contingent on the results achieved by the specialized services.

5. If a certified real estate appraiser enters into an agreement to perform specialized services for a contingent fee, this fact shall be clearly stated in each written and oral report. In each written report, this fact shall be clearly stated in a prominent location in the report, each letter of transmittal, and the certification statement made by the appraiser in the report.

6. A certified real estate appraiser making a significant contribution to the valuation or analysis process in completing an appraisal assignment shall sign the final written report or acknowledge the appraiser's contribution in a verbal report.

89 Acts, ch 290, §18 HF 790  
NEW section

### **117B.19 Retention of records.**

1. A certified real estate appraiser shall retain for three years, originals or true copies of all written contracts engaging the appraiser's services for real estate appraisal work and all reports and supporting data assembled and formulated for use by the appraiser or the associate appraiser in preparing the reports.

2. The three-year period for retention of records is applicable to each engagement of the services of a certified real estate appraiser and shall commence upon the date of the submission of the appraisal to the client unless, within the three-year period, the appraiser is notified that the appraisal or report is involved in litigation, in which event the three-year period for the retention of records shall commence upon the date of the final disposition of the litigation.

3. All records required to be maintained under this chapter shall be made available by a certified real estate appraiser for inspection and copying by the board on reasonable notice to the appraiser.

89 Acts, ch 290, §19 HF 790  
NEW section

## **CHAPTER 120**

### **TRAVEL AGENCIES AND AGENTS**

#### **120.1 Definitions.**

1. "*Applicant*" means a person applying for registration under this chapter.
2. "*Customer*" means a person who is offered or who purchases travel services.
3. "*Registrant*" means a person registered pursuant to this chapter.
4. "*Secretary*" means the secretary of state.

5. "*Solicitation*" means contact by a travel agency or travel agent of a customer for the purpose of selling or offering to sell travel services.

6. "*Travel agency*" means a person who represents, directly or indirectly, that the person is offering or undertaking by any means or method, to provide travel services for a fee, commission, or other valuable consideration, direct or indirect.

7. "*Travel agent*" means a person employed by a travel agency whose principal duties include consulting with and advising persons concerning travel arrangements or accommodations.

8. "*Travel services*" means arranging or booking vacation or travel packages, travel reservations or accommodations, tickets for domestic or foreign travel by air, rail, ship, bus, or other medium of transportation, or hotel or other lodging accommodations. Travel services include travel related prizes or awards for which the customer must pay a fee or, in connection with the prize or award, expend moneys for the direct or indirect monetary benefit of the person making the award, in order for the customer to collect or enjoy the benefits of the prize or award.

89 Acts, ch 274, §1 HF 355  
NEW section

### 120.2 Registration required.

1. a. A travel agency doing business in this state shall register with the secretary of state as a travel agency if it or its travel agent conducts the solicitation of an Iowa resident.

b. A travel agency required to register under paragraph "a" shall not permit a travel agent employed by the travel agency to do business in this state unless the agency has filed the required registration statement.

2. A travel agent shall not knowingly do business in this state unless and until the travel agency employing the travel agent has registered with the secretary of state as a travel agency if the travel agency or any of the agency's travel agents conduct the solicitation of an Iowa resident.

3. This section does not require registration for, or prohibit, solicitation by mail or telecommunications of a person with whom the travel agency has a previous travel services provider-customer relationship, having previously arranged travel related services for that customer on at least one prior occasion.

4. "*Doing business*" in this state, for purposes of this chapter, means any of the following:

a. Offering to sell or selling travel services, if the offer is made or received within the state.

b. Offering to arrange, or arranging, travel services for a fee or commission, direct or indirect, if the offer is made or received in this state.

c. Offering to, or awarding travel services as a prize or award, if the offer or award is made in or received in this state.

5. An applicant shall complete the registration statement form provided by the secretary. The registration statement must be accompanied by the required bond or evidence of financial responsibility and the registration fee. The registration statement shall include all of the following:

a. The name and signature of an officer or partner of a business entity or the names and signatures of the principal owner and operator if the agency is a sole proprietorship.

b. The name, address, and telephone number of the applicant and the name of all travel agents employed by the applicant travel agency.

c. The name, address, and telephone number of any person who owns or controls, directly or indirectly, ten percent or more of the applicant.

d. If the applicant is a foreign corporation or business, the name and address of the corporation's agent in this state for service of process.

e. Any additional information required by rule adopted by the secretary pursuant to chapter 17A.

The application shall be accompanied by a written irrevocable consent to service of process. The consent must provide that actions in connection with doing business in this state may be commenced against the registrant in the proper jurisdiction in this state in which the cause of action may arise, or in which the plaintiff may reside, by service of process on the secretary as the registrant's agent and stipulating and agreeing that such service of process shall be taken and held in all courts to be as valid and binding as if service of process had been made upon the person according to the laws of this or any other state. The consent to service of process shall be in such form and supported by such additional information as the secretary may by rule require.

An annual registration fee as established by the secretary by rule is required at the time the registration statement is filed with the secretary, and on or before the anniversary date of the effective date of registration for each subsequent year. The registration fee shall be established at a rate deemed reasonably necessary by the secretary to support the administration of this chapter, but not to exceed fifteen dollars per year per agency. If a registrant fails to pay the annual registration fee, the registration lapses and becomes ineffective.

A registrant shall submit to the secretary corrections to the information supplied in the registration statement within a reasonable time after a change in circumstances, which circumstances would be required to be reported in an initial registration statement, except travel agents' names as required in subsection 5, paragraph "b". The names of travel agents shall be updated at the time of annual registration.

The secretary may revoke or suspend a registration for cause subject to the contested case provisions of chapter 17A.

89 Acts, ch 274, §2 HF 355  
NEW section

### **120.3 Evidence of financial security.**

1. An application for a travel agency must be accompanied by a surety or cash performance bond in conformity with rules adopted by the secretary in the principal amount of ten thousand dollars, with an aggregate limit of ten thousand dollars. The bond shall be executed by a surety company authorized to do business in this state, and the bond shall be continuous in nature until canceled by the surety with not less than sixty days' written notice to both the registrant and to the secretary. The notice shall indicate the surety's intent to cancel the bond on a date at least sixty days after the date of the notice.

2. The bond shall be payable to the state for the use and benefit of either:

a. A person who is injured by the fraud, misrepresentation, or financial failure of the travel agency or a travel agent employed by the travel agency.

b. The state on behalf of a person or persons under paragraph "a".

The bond shall be conditioned such that the registrant will pay any judgment recovered by a person in a court of this state in a suit for actual damages, including reasonable attorney's fees, or for rescission, resulting from a cause of action involving the sale or offer of sale of travel services. The bond shall be open to successive claims, but the aggregate amount of the claims paid shall not exceed the principal amount of the bond.

3. If a registrant has contracted with the airlines reporting corporation or the passenger network services corporation, or similar organizations approved by the secretary of state with equivalent bonding requirements for participation, in lieu of the bond required by subsection 1, the registrant may file with the secretary a certified copy of the official approval and appointment of the applicant from the airlines reporting corporation or the passenger network services corporation.

4. In lieu of any bond or guarantee required to be provided by this section, a registrant may do any of the following:

a. File with secretary proof of professional liability and errors and omissions insurance in an amount of at least one million dollars annually.

b. Deposit with the secretary cash, securities, or a statement from a federally insured financial institution guaranteeing the performance of the registrant up to a maximum of ten thousand dollars to be held or applied to the purposes to which the proceeds of the bond would otherwise be applied.

89 Acts, ch 274, §3 HF 355  
NEW section

#### 120.4 Penalties.

1. A person required to register as a travel agency, or an owner of ten percent or more of a travel agency, required to register by this chapter, which fails to register, fails to make required corrections to its registration statement, or fails to pay the required fee on or before thirty days after the fee becomes due, commits a serious misdemeanor.

2. If a person required to be registered or listed upon a registration statement by this chapter receives money, as a fee, commission, compensation, or profit in connection with doing business in this state in violation of section 120.2, the person, in addition to the criminal penalty in subsection 1, shall be liable for a civil penalty of not less than three times the sum so received, as may be determined by the court, which penalty may be recovered in a court of competent jurisdiction by an aggrieved person, or by the attorney general for the benefit of an aggrieved person or class of persons.

3. A violation of this chapter is also a violation of section 714.16.

89 Acts, ch 274, §4 HF 355  
NEW section

#### 120.5 Exemptions.

1. This chapter does not apply to:

a. A bona fide employee of a travel agency who is engaged solely in the business of the agency, and whose principal duties do not include consulting with and advising persons concerning travel arrangements or accommodations.

b. A direct common carrier of passengers or property regulated by an agency of the federal government or employees of a common carrier when engaged solely in the transportation business of the carrier as identified in the carrier's certificate.

2. A travel agency is subject to this chapter, notwithstanding that the customer's name was obtained from the customer as part of a promotion where the customer signed up to receive a sales presentation or to enter a drawing for a prize prior to the solicitation. These activities do not constitute a previous travel services provider-customer relationship.

89 Acts, ch 274, §5 HF 355  
NEW section

## CHAPTER 122

### ORGANIZATIONS SOLICITING PUBLIC DONATIONS

#### 122.1 Permit required.

An organization, institution, or charitable association, either directly or through agents or representatives, shall not solicit public donations in this state, unless it has first obtained a permit from the secretary of state. The application for a permit under this section shall be on a form prescribed and furnished by the secretary of state. The secretary may accept, as an application for a permit,

articles of incorporation filed pursuant to section 504A.30 and a request for a permit in lieu of a separate application.

89 Acts, ch 93, §1 HF 506  
Section amended

### 122.2 Fee.

The secretary of state shall collect a fee of ten dollars for each permit issued. Such a permit will authorize the applicant therefor, either directly or through its agents or representatives, to solicit public donations in any county, city, or township in this state.

89 Acts, ch 93, §2 HF 506  
Section amended

### 122.3 Expiration of permit.

A permit shall expire annually on the thirty-first day of December following the date of issuance.

89 Acts, ch 93, §3 HF 506  
Section amended

### 122.4 Exceptions—reports.

This chapter, however, shall not be construed to prohibit any person as representative or agent of any local organization, church, school, or any recognized society or branch of any church or school, from publicly soliciting funds or donations from within the county in which such person resides, or such church, school, institution, organization, or charitable association is located, or within an adjoining county if such residence or location is within six miles of such adjoining county. Any such organized institution or charitable association having a permit under the provisions of this chapter shall file an annual report with the secretary of state during the month of December of each year, which report shall contain, in accordance with generally approved accounting methods, the following information:

1. The names and post-office addresses of its officers, and whether any change has been made during the year previous to making such report.
2. A detailed statement of all moneys received during the year previous to making said report.
3. A detailed statement of moneys disbursed during the year previous to making said report, and for what purpose.

The annual report shall be made on forms prescribed and furnished by the secretary of state.

At the time of filing this annual report the organization, institution, or charitable association shall pay to the secretary of state a filing fee of five dollars.

89 Acts, ch 93, §4 HF 506  
Section amended

### 122.5 Enforcement.

The secretary of state shall enforce the provisions of this chapter and may call to the secretary's aid the attorney general, the county attorney of any county, and any peace officer in the state, for the purpose of investigation and prosecution. The secretary may call upon the extension division of the state University of Iowa and the director of the department of human services for assistance.

A violation of this chapter is a violation of section 714.16, subsection 2, paragraph "a". In addition to the penalties imposed pursuant to section 122.6, the provisions of section 714.16, including but not limited to provisions relating to investigation, injunctive relief, and penalties apply to this chapter.

89 Acts, ch 93, §5 HF 506  
NEW unnumbered paragraph 2

### 122.7 Severability.

If any provision of this chapter or application of a provision of this chapter to any person or circumstances is held invalid, the invalidity shall not affect other

provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

89 Acts, ch 93, §6 HF 506  
NEW section

## CHAPTER 122A

### IOWA STANDARD TIME

#### 122A.1 Standard time and daylight saving time.

The standard time in this state is the solar time of the ninetieth meridian of longitude west of Greenwich,\* commonly known as central standard time, except that from two o'clock ante meridiem of the first Sunday of April in every year until two o'clock ante meridiem of the last Sunday of October in the same year, standard time shall be advanced one hour. The period of time so advanced shall be known as "daylight saving time."

89 Acts, ch 83, §25 SF 112  
\*England  
Section amended

## CHAPTER 122B

### DONATIONS OF PERISHABLE FOOD

#### 122B.1 Donations of perishable food—donor liability—penalty.

1. As used in this section unless the context otherwise requires:
  - a. "*Canned foods*" means canned foods that have been hermetically sealed or commercially processed and prepared for human consumption.
  - b. "*Charitable or nonprofit organization*" means an organization which is exempt from federal or state income taxation, except that the term does not include organizations which sell or offer to sell donated items of food. The assessment of a nominal fee or request for a donation in connection with the distribution of food by the charitable or nonprofit organization is not a sale.
  - c. "*Gleaner*" means a person who harvests, for free distribution, an agriculture crop that has been donated by the owner.
  - d. "*Perishable food*" means food which may spoil or otherwise become unfit for human consumption because of its nature or type of physical condition. This term includes, but is not limited to, fresh and processed meats, poultry, seafood, dairy products, eggs in the shell, fresh fruits and vegetables, and foods which have been packaged, refrigerated, or frozen.
2. A gleaner, or a restaurant, food establishment, food service establishment, school, manufacturer of foodstuffs, or other person who, in good faith, donates food to a charitable or nonprofit organization for ultimate free distribution to needy individuals is not subject to criminal or civil liability arising from the condition of the food if the donor reasonably inspects the food at the time of the donation and finds the food fit for human consumption. The immunity provided by this subsection does not extend to a donor or gleaner if damages result from the negligence, recklessness, or intentional misconduct of the donor, or if the donor or gleaner has, or should have had, actual or constructive knowledge that the food is tainted, contaminated, or harmful to the health or well-being of the ultimate recipient.
3. A bona fide charitable or nonprofit organization which receives, in good faith, donated food for ultimate distribution to needy individuals either for free or for a nominal fee is not subject to criminal or civil liability arising from the

condition of the food, if the charitable or nonprofit organization reasonably inspects the food at the time of donation and at the time of distribution and finds the food fit for human consumption. The immunity provided by this subsection does not extend to a charitable or nonprofit organization if damages result from the negligence, recklessness, or intentional misconduct of the charitable or nonprofit organization or if the charitable or nonprofit organization has or should have had actual or constructive knowledge that the food is tainted, contaminated, or harmful to the health or well-being of the ultimate recipient.

4. The immunity provided by this section is applicable to the good faith donation of canned or perishable food or farm products not readily marketable due to appearance, freshness, grade, surplus or other considerations, but does not apply to canned goods that are defective or cannot be otherwise offered for sale to members of the general public. This does not restrict the authority of a lawful agency to otherwise regulate or ban the use of such food for human consumption. Charitable or nonprofit organizations which regularly accept donated food for distribution pursuant to this section shall request the appropriate local health authorities to inspect the food at regular intervals.

5. A person, including an employee or volunteer for a charitable or nonprofit organization, who sells, or offers to sell, for profit, food that the person knows to be donated pursuant to this section is guilty of a simple misdemeanor. For purposes of this subsection, the assessment of a nominal fee or request for a donation by the charitable or nonprofit organization is not a sale.

89 Acts, ch 181, §1 HF 529  
Subsection 2 amended

## CHAPTER 123

### IOWA ALCOHOLIC BEVERAGE CONTROL ACT

#### 123.3 Definitions.

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

1. "*Commission*" means the alcoholic beverages commission established by this chapter.
2. "*Division*" means the alcoholic beverages division of the department of commerce established by this chapter.
3. "*Administrator*" means the administrator of the division, appointed pursuant to the provisions of this chapter, or the administrator's designee.
4. "*Local authority*" means the city council of any incorporated city in this state, or the county board of supervisors of any county in this state, which is empowered by this chapter to approve or deny applications for retail beer or wine permits and liquor control licenses; empowered to recommend that such permits or licenses be granted and issued by the division; and empowered to take other actions reserved to them by this chapter.
5. "*Alcohol*" means the product of distillation of any fermented liquor rectified one or more times, whatever may be the origin thereof, and includes synthetic ethyl alcohol.
6. "*Spirits*" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including, but not limited to, brandy, rum, whisky, and gin.
7. "*Wine*" means any beverage containing more than five percent but not more than seventeen percent of alcohol by weight obtained by the fermentation of the natural sugar contents of fruits or other agricultural products but excluding any product containing alcohol derived from malt or by the distillation process from grain, cereal, molasses or cactus.

8. "*Alcoholic liquor*" or "*intoxicating liquor*" means the varieties of liquor defined in subsections 5 and 6 which contain more than five percent of alcohol by weight, beverages made as described in subsection 10 which beverages contain more than five percent of alcohol by weight but which are not wine as defined in subsection 7, and every other liquid or solid, patented or not, containing spirits and every beverage obtained by the process described in subsection 7 containing more than seventeen percent alcohol by weight, and susceptible of being consumed by a human being, for beverage purposes. Alcohol manufactured in this state for use as fuel pursuant to an experimental distilled spirits plant permit or its equivalent issued by the federal bureau of alcohol, tobacco and firearms is not an "*alcoholic liquor*".

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

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

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

12. "*Person of good moral character*" means any person who meets all of the following requirements:

a. The person has such financial standing and good reputation as will satisfy the administrator that the person will comply with this chapter and all laws, ordinances, and regulations applicable to the person's operations under this chapter. However, the administrator shall not require the person to post a bond to meet the requirements of this paragraph.

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

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

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

e. If such person is a corporation, partnership, association, club, or hotel or motel the requirements of this subsection shall apply to each of the officers, directors, and partners of such person, and to any person who directly or indirectly owns or controls ten percent or more of any class of stock of such person or has an interest of ten percent or more in the ownership or profits of such person. For the purposes of this provision, an individual and the individual's spouse shall be regarded as one person.

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

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

15. "*Application*" means a formal written request for the issuance of a permit or license supported by a verified statement of facts.

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

17. *"Package"* means any container or receptacle used for holding alcoholic liquor.

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

19. *"Brewer"* means any person who manufactures beer for the purpose of sale, barter, exchange, or transportation.

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

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

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

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

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

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

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

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

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

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

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

31. *"Licensed premises"* or *"premises"* means all rooms, enclosures, contiguous areas, or places susceptible of precise description satisfactory to the administrator where alcoholic beverages, wine, or beer is sold or consumed under authority of a liquor control license, wine permit, or beer permit. A single licensed premise may

consist of multiple rooms, enclosures, areas or places if they are wholly within the confines of a single building or contiguous grounds.

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

33. "Legal age" means nineteen years of age or more.\*

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

35. "Retail wine permit" means a class "B" wine permit issued under this chapter.

36. "City" means a municipal corporation but not including a county, township, school district, or any special purpose district or authority.

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

89 Acts, ch 161, §1 SF 118

\*Restrictions applicable to persons age nineteen or twenty; see §123.47A Subsection 12, paragraph b stricken and paragraphs c-f relettered as b-e

### 123.22 State monopoly.

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

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

may manufacture, sell, or transport ingredients and devices other than alcohol for the making of home-made wine.

89 Acts, ch 161, §2 SF 118  
Unnumbered paragraph 1 amended

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

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

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

89 Acts, ch 161, §3 SF 118  
Subsection 2 amended

### **123.29 Special permits—exception for clergy.**

A special permit for the purchase, possession, or transportation of alcoholic liquors for the purposes specified in those permits may be issued by the administrator upon application being made to the division in the form and manner prescribed by the administrator, accompanied by payment of the prescribed fee, and upon the administrator being satisfied that the applicant has complied with divisional rules established for the issuance of such permit. Such special permits may be issued to the following persons and for the following purposes:

1. To a physician, pharmacist, dentist, or veterinarian, entitling the holder to purchase and import alcohol from distillers and wholesalers or from the division or a class "E" liquor control licensee for use medicinally and in compounding prescriptions and to sell the alcohol for use medicinally in the compounded prescription only upon the prescription of a licensed physician or surgeon, or to use the alcohol in manufacturing or compounding lotions, compounds, and like commodities not susceptible for beverage purposes, and to sell the commodities for public use.

2. To a veterans home, sanitarium, hospital, college, or home for the aged which will entitle the holder to purchase and import alcohol from distillers and wholesalers or from the division or a class "E" liquor control licensee for use for medicinal, laboratory, and scientific purposes only.

3. To manufacturers of patent and proprietary medicines, tinctures, food products, extracts, toilet articles and perfumes, and like commodities, none of which are susceptible of use as a beverage, but which contain alcoholic liquor as one of their ingredients. Any individual, or member of a firm, or officer of a corporation, desiring such permit shall file an affidavit with the division stating the following facts:

a. The name, place of business, and post-office address of the person desiring such permit.

b. The business in which said person is engaged and the articles manufactured in such business which require in their manufacture the use of alcoholic liquors.

c. That neither the applicant, if the applicant is an individual, nor any members of the firm or officers of the corporation, if the applicant is not an individual, has been convicted of any violation of the laws of this state with reference to the sale of alcoholic liquors, wine, or beer within the three years preceding the date of the affidavit.

If the administrator is satisfied that the facts stated in such affidavit are true and that the applicant is a person fit and proper to be entrusted with the permit applied for, the permit shall be issued.

Such special permit shall entitle the holder to import into the state, or purchase from licensed distillers within the state or from the division, alcoholic liquors for

use in manufacture in accordance with the terms of said permit, and to sell the product of such manufacture.

It shall be the duty of every manufacturer holding a special permit under the provisions of this subsection, whenever such manufacturer purchases alcoholic liquor from any source other than the division, to immediately file with the division a report of the receipt of such liquor in accordance with rules adopted by the administrator.

Every person holding a special liquor permit under this chapter shall fill out in duplicate, on forms furnished by the division, the amount and kinds of liquors purchased, and shall retain one copy in the person's establishment for a period of two years. The class "E" liquor control licensee from whom the purchase was made shall monthly forward the other copy to the division.

Nothing in this section shall prohibit the legitimate sale of patent and proprietary medicines, tinctures, food products, extracts, toilet articles and perfumes, and like commodities, none of which are susceptible of use as a beverage but which contain alcoholic liquor as one of their ingredients, through the ordinary retail or wholesale channels.

This section does not prohibit a member of the clergy of any church or denomination which uses vinous liquor in its sacramental ceremonies from purchasing, having shipped by interstate or intrastate common carrier, possessing, and using such vinous liquor for sacramental purposes.

89 Acts, ch 161, §4-6 SF 118

Subsection 3 stricken

Subsection 3 (formerly 4), paragraph c, unnumbered paragraph 2 amended

NEW unnumbered paragraph at end of section

### **123.32 Action by authorities and department on applications for liquor control licenses and wine and beer permits.**

1. *Filing of application.* An application for a class "A", class "B", class "C", or class "E" liquor control license, for a retail beer permit as provided in sections 123.128 and 123.129, or for a class "B" retail wine permit as provided in section 123.176, accompanied by the necessary fee and bond, if required, shall be filed with the appropriate city council if the premises for which the license or permit is sought are located within the corporate limits of a city, or with the board of supervisors if the premises for which the license or permit is sought are located outside the corporate limits of a city. An application for a class "D" liquor control license and for a class "A" beer or class "A" wine permit, accompanied by the necessary fee and bond, if required, shall be filed with the division, which shall proceed in the same manner as in the case of an application approved by local authorities.

2. *Action by local authorities.* The local authority shall either approve or disapprove the issuance of a liquor control license, retail wine permit, or retail beer permit, shall endorse its approval or disapproval on the application and shall forward the application along with the necessary fee and bond, if required, to the division. Upon the initial application for a liquor control license, retail wine permit, or retail beer permit, the fact that the local authority determines that no liquor control license, retail wine permit, or retail beer permit shall be issued shall not be held to be arbitrary, capricious, or without reasonable cause. There is no limit upon the number of liquor control licenses, retail wine permits, or retail beer permits which may be approved for issuance by local authorities.

3. *Action by administrator.* Upon receipt of an application having been disapproved by the local authority, the administrator shall disapprove the application, so notify the applicant by certified mail, and return the fee and any bond to the applicant. Upon receipt of an application having been approved by the local authority, the division shall make such investigation as the administrator deems necessary and may require the applicant to appear to be examined under oath regarding any matters pertinent to the application, in which case a record

shall be made of all testimony or evidence and the same shall become a part of the application. The administrator may appoint a member of the division or may request the department of inspections and appeals to receive the testimony under oath and evidence. If the application is approved by the administrator, the license or permit applied for shall be issued. If the application is disapproved by the administrator, the applicant and the appropriate local authority shall be so notified by certified mail, and the fee and any bond returned to the applicant.

4. *Appeal to hearing board.* Any applicant for a liquor control license, wine permit, or beer permit may appeal from the administrator's disapproval of an application for a license or permit to the division hearing board, established pursuant to section 123.15. If upon appeal the hearing board determines that the local authority acted arbitrarily, capriciously, or without reasonable cause in disapproving the application, or that, where the local authority approved the application, the administrator's own disapproval should be reversed, it shall order issuance of a license or permit. The same right of appeal to the hearing board shall be afforded a liquor control licensee, wine permittee, or beer permittee, whose license or permit has been suspended or revoked under this chapter, and the hearing board shall reduce the period of suspension or order reinstatement of the license or permit for good cause shown.

5. *Judicial review.* Judicial review of the action of the division hearing board may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county wherein the premises covered by the application are situated.

Where the hearing board on an appeal by an applicant finds that the local authority acted arbitrarily, capriciously, or without reasonable cause in disapproving an application and the administrator issues a license or permit, the local authority may seek judicial review of such decision according to the terms of the Iowa administrative procedure Act within thirty days.

89 Acts, ch 161, §7 SF 118  
Subsection 3 amended

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

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

The administrator may compromise and settle doubtful and disputed claims for taxes imposed under this chapter or for taxes of doubtful collectibility, notwithstanding section 19.9. The administrator may enter into informal settlements pursuant to section 17A.10 to compromise and settle doubtful and disputed claims for taxes imposed under this chapter. The administrator may make a claim under a licensee's or permittee's penal bond for taxes of doubtful collectibility. Whenever a compromise or settlement is made, the administrator shall make a complete record of the case showing the tax assessed, reports and audits, if any, the licensee's or permittee's grounds for dispute or contest, together with all evidence of the dispute or contest, and the amounts, conditions, and settlement or compromise of the dispute or contest.

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

The administrator shall adopt rules establishing procedures for payment of disputed taxes imposed under this chapter. If it is determined that the tax is not

due in whole or in part, the division shall promptly refund the part of the tax payment which is determined not to be due.

Any party aggrieved by a decision of the administrator under this section may appeal the decision to the division's hearing board.

89 Acts, ch 252, §1 HF 758  
NEW unnumbered paragraphs 2-5

**123.46 Consumption in public places—intoxication—right to chemical test on arrest—exoneration.**

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

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

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

c. "Peace officer" means the same as defined in section 801.4.

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

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

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

4. Upon the expiration of two years following conviction for a violation of this section, a person may petition the court to exonerate the person of the conviction, and if the person has had no other criminal convictions, other than simple misdemeanor violations of chapter 321 during the two-year period, the court shall order the person exonerated of the offense and the record expunged. Upon entry of an order exonerating the person of the conviction, the record of the conviction shall be expunged by the clerk of the district court.

89 Acts, ch 225, §10 HF 780  
NEW subsection 4

**123.49 Miscellaneous prohibitions.**

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

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

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

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

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

b. Sell or dispense any alcoholic beverage or beer on the premises covered by the license or permit, or permit its consumption thereon between the hours of two a.m. and six a.m. on a weekday, and between the hours of two a.m. on Sunday and six a.m. on the following Monday, however, a holder of a liquor control license or retail beer permit granted the privilege of selling alcoholic liquor or beer on Sunday may sell or dispense alcoholic liquor or beer between the hours of ten a.m. and twelve midnight on Sunday.

c. Sell alcoholic beverages, wine, or beer to any person on credit, except with a bona fide credit card. This provision does not apply to sales by a club to its members nor to sales by a hotel or motel to bona fide registered guests.

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

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

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

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

h. Sell, give, or otherwise supply any alcoholic beverage, wine, or beer to any person, knowing or having reasonable cause to believe the person to be under legal age, or permit any person, knowing or having reasonable cause to believe the person to be under legal age, to consume any alcoholic beverage, wine, or beer.

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

j. Knowingly permit or engage in any criminal activity on the premises covered by the license or permit.

k. Sell or dispense any wine on the premises covered by the permit or permit the consumption on the premises between the hours of two a.m. and six a.m. on a weekday, and between the hours of two a.m. on Sunday and six a.m. on the following Monday, however, a holder of a wine permit authorized to sell wine on Sunday may sell or dispense wine between the hours of ten a.m. and twelve midnight on Sunday.

3. No person under legal age shall misrepresent the person's age for the purpose of purchasing or attempting to purchase any alcoholic beverage, wine, or beer from any licensee or permittee. If any person under legal age misrepresents the person's age, and the licensee or permittee establishes that the licensee or permittee made reasonable inquiry to determine whether the prospective purchaser was over legal age, the licensee or permittee is not guilty of selling alcoholic liquor, wine, or beer to minors.

4. No privilege of selling alcoholic liquor, wine, or beer on Sunday as provided in sections 123.36, subsection 6, and 123.134, subsection 5, shall be granted to a club or other organization which places restrictions on admission or membership in the club or organization on the basis of sex, race, religion, or national origin. However, the privilege may be granted to a club or organization which places restrictions on membership on the basis of sex, if the club or organization has an auxiliary organization open to persons of the other sex.

89 Acts, ch 67, §26 SF124  
Subsection 2, paragraph a amended

### 123.50 Criminal and civil penalties.

1. Any person who violates any of the provisions of section 123.49 shall be guilty of a simple misdemeanor.

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

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

a. Upon a first conviction, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of fourteen days. However, if the conviction is for a violation of section 123.49, subsection 2, paragraph "h", which occurred on or after January 1, 1988, the violator's liquor control license or wine or beer permit shall not be suspended, but the violator shall be assessed a civil penalty in the amount of three hundred dollars. Failure to pay the civil penalty as ordered under section 123.39 or this subsection will result in automatic suspension of the license or permit for a period of fourteen days.

b. Upon a second conviction within a period of two years, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of thirty days.

c. Upon a third conviction within a period of five years, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of sixty days.

d. Upon a fourth conviction within a period of five years, the violator's liquor control license, wine permit, or beer permit shall be revoked.

4. A person, other than a licensee or permittee or a minor, who violates section 123.47 is guilty of a serious misdemeanor punishable by a minimum fine of one hundred dollars for a first offense, two hundred and fifty dollars for a second

offense, and five hundred dollars for a third and subsequent offense, and a maximum fine for any offense of not more than one thousand dollars.

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

89 Acts, ch 252, §2 HF 758  
NEW subsection 5

### **123.58 Auditing.**

All provisions of sections 11.6, 11.7, 11.10, 11.11, 11.14, 11.21, and 11.23, relating to auditing of financial records of governmental subdivisions which are not inconsistent with this chapter are applicable to the division and its offices, warehouses, and depots.

89 Acts, ch 264, §4 HF 451  
Section amended

### **123.124 Permits—classes.**

Permits for the manufacture and sale, or sale of beer shall be divided into four classes, known as class "A", special class "A", class "B", or class "C" permits. A class "A" permit allows the holder to manufacture and sell beer at wholesale. A holder of a special class "A" permit may only manufacture beer to be consumed on the licensed premises for which the person also holds a class "C" liquor control license or class "B" beer permit. A class "B" permit allows the holder to sell beer at retail for consumption on or off the premises. A class "C" permit allows the holder to sell beer at retail for consumption off the premises.

89 Acts, ch 221, §1 HF 127  
Section amended

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

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

89 Acts, ch 221, §2 HF 127  
Section amended

### **123.127 Class "A" and special class "A" application.**

A class "A" permit shall be issued by the administrator to any person who:

1. Submits a written application for such permit, which application shall state under oath:

a. The name and place of residence of the applicant and the length of time the applicant has lived at such place of residence.

b. That the applicant is a citizen of the state of Iowa.

c. The place of birth of the applicant, and if the applicant is a naturalized citizen, the time and place of such naturalization.

d. The location of the premises where the applicant intends to operate.

e. The name of the owner of the premises and if such owner is not the applicant, that such applicant is the actual lessee of the premises.

2. Establishes:

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

b. That the premises where the applicant intends to operate conform to all laws and health and fire regulations applicable thereto.

3. Furnishes a bond in the form prescribed and to be furnished by the division, with good and sufficient sureties to be approved by the administrator conditioned upon the faithful observance of this chapter, in the penal sum of five thousand dollars, payable to the state.

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

An applicant for a special class "A" permit shall comply with the requirements for a class "A" permit and shall also state on the application that the applicant holds or has applied for a class "C" liquor control license or class "B" beer permit.

89 Acts, ch 221, §3 HF 127

NEW unnumbered paragraph at end of section

#### **123.130 Authority under class "A" and special class "A" permit.**

Any person holding a class "A" permit issued by the division shall be authorized to manufacture and sell, or sell at wholesale, beer for consumption off the premises, such sales within the state to be made only to persons holding subsisting class "A", "B" or "C" permits, or liquor control licenses issued in accordance with the provisions of this chapter. The holder of a class "A" permit may manufacture beer of more than five percent alcohol by weight for shipment outside this state only. However, a class "A" permit does not grant authority to manufacture wine as defined in section 123.3, subsection 7.

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

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

89 Acts, ch 221, §4 HF 127

NEW unnumbered paragraph 3

#### **123.134 Beer fees—Sunday sales.**

1. The annual permit fee for a class "A" or special class "A" permit is 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 is the nearest, the permit fee which is the largest shall prevail. However, if the premises are located in an unincorporated town, for purposes of this subsection the unincorporated town shall be treated as if it is a city.

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.

89 Acts, ch 221, §5 HF 127  
Subsection 1 amended

### 123.135 Certificate of compliance—civil penalty.

1. A manufacturer, brewer, bottler, importer, or vendor of beer or any agent thereof desiring to ship or sell beer, or have beer brought into this state for resale by a class "A" permittee shall first make application for and be issued a brewer's certificate of compliance by the administrator for that purpose. The certificate of compliance expires at the end of one year from the date of issuance and shall be renewed for a like period upon application to the administrator unless otherwise revoked for cause. Each application for a certificate of compliance or renewal of a certificate shall be accompanied by a fee of one hundred dollars payable to the division. Each holder of a certificate of compliance shall furnish the information in the form the administrator requires. A brewer whose plant is located in Iowa and who otherwise holds a class "A" beer permit to sell beer at wholesale is exempt from the fee, but not from the terms and conditions of the permit. The holder of a special class "A" permit is exempt from the requirements of this section.

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

3. All class "A" permit holders shall sell only those brands of beer which are manufactured, brewed, bottled, shipped, or imported by a person holding a current certificate of compliance. Any employee or agent working for or representing the holder of a certificate of compliance within this state shall register the employee's or agent's name and address with the division, which names and addresses shall be filed with the division's copy of the certificate of compliance issued.

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

5. Notwithstanding any other penalties provided by this chapter, any holder of a certificate of compliance or any class "A" permit holder who violates this chapter or the rules adopted pursuant to this chapter is subject to a civil fine not to exceed one thousand dollars or suspension of the holder's certificate or permit

for a period not to exceed one year, or both such civil fine and suspension. Civil fines imposed under this section shall be collected and retained by the division.

89 Acts, ch 221, §6 HF 127; 89 Acts, ch 252, §3 HF 758  
 Subsection 1 amended  
 Subsection 5 amended

### **123.136 Barrel tax.**

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

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

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

89 Acts, ch 221, §7 HF 127  
 Unnumbered paragraph 1 amended

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

A person holding a class "A" or special class "A" permit shall on or before the tenth day of each calendar month commencing on the tenth day of the calendar month following the month in which the person is issued a permit, make a report under oath to the division upon forms to be furnished by the division for that purpose showing the exact number of barrels of beer, or fractional parts of barrels, sold by the permit holder during the preceding calendar month. The report shall also state information the administrator requires, and permit holders shall at the time of filing a report pay to the division the amount of tax due at the rate fixed in section 123.136.

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

89 Acts, ch 221, §8 HF 127  
 Unnumbered paragraph 1 amended

### **123.138 Books of account required.**

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

89 Acts, ch 221, §9 HF 127  
 Section amended

### **123.139 Separate locations—class "A", special class "A".**

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

89 Acts, ch 221, §10 HF 127  
 Section amended

### **123.142 Unlawful sale and importation.**

It is unlawful for the holder of a class "B" or class "C" permit issued under this chapter to sell beer, except beer brewed on the premises covered by a special class

“A” permit or beer purchased from a person holding a class “A” permit issued in accordance with this chapter, and on which the tax provided in section 123.136 has been paid. However, this section does not apply to the holders of special class “B” permits issued under section 123.133 for sales in cars engaged in interstate commerce nor to class “D” liquor control licensees as provided in this chapter.

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

89 Acts, ch 221, §11 HF 127

Unnumbered paragraph 1 amended

### **123.180 Vintner’s certificate of compliance—wholesale and retail restrictions—penalty.**

1. A manufacturer, vintner, bottler, importer, or vendor of wine or an agent thereof desiring to ship, sell, or have wine brought into this state for resale by the division or for sale at wholesale by a class “A” permittee shall first make application for and shall be issued a vintner’s certificate of compliance by the administrator for that purpose. The vintner’s certificate of compliance shall expire at the end of one year from the date of issuance and shall be renewed for a like period upon application to the administrator unless otherwise revoked for cause. Each application for a vintner’s certificate of compliance or renewal of a certificate shall be accompanied by a fee of one hundred dollars payable to the division. Each holder of a vintner’s certificate of compliance shall furnish the information required by the administrator in the form the administrator requires. A vintner or wine bottler whose plant is located in Iowa and who otherwise holds a class “A” wine permit to sell wine at wholesale is exempt from the fee, but not the other terms and conditions. The holder of a vintner’s certificate of compliance may also hold a class “A” wine permit.

2. At the time of applying for a vintner’s certificate of compliance, each applicant shall file with the division a list of all class “A” wine permittees with whom it intends to do business. The listing of class “A” wine permittees as filed with the division may be amended from time to time by the holder of the certificate of compliance.

3. All class “A” wine permit holders shall sell only those brands of wine which are manufactured, bottled, fermented, shipped, or imported by a person holding a current vintner’s certificate of compliance. An employee or agent working for or representing the holder of a vintner’s certificate of compliance within this state shall register the employee’s or agent’s name and address with the division. These names and addresses shall be filed with the division’s copy of the certificate of compliance issued except that this provision does not require the listing of those persons who are employed on the premises of a bottling plant, or winery where wine is manufactured, fermented, or bottled in Iowa or the listing of those persons who are thereafter engaged in the transporting of the wine.

4. It is unlawful for a holder of a vintner’s certificate of compliance or the holder’s agent, or any class “A” wine permittee or the permittee’s agent, to discriminate between class “B” wine permittees authorized to sell wine at retail.

5. It is unlawful for a holder of a vintner’s certificate of compliance or the vintner’s agent who is engaged in the business of selling wine to class “A” wine permittees to discriminate between class “A” wine permittees authorized to sell wine at wholesale.

6. Regardless of any other penalties provided by this chapter, any holder of a certificate of compliance relating to wine or a class “A” permittee who violates this chapter or the rules adopted pursuant to this chapter is subject to a civil fine not to exceed one thousand dollars or subject to suspension of the certificate of

compliance or permit for a period not to exceed one year, or to both civil fine and suspension. Civil fines imposed under this section shall be collected and retained by the division.

89 Acts, ch 161, §8 SF 118; 89 Acts, ch 252, §4 HF 758  
 Subsection 2 amended  
 Subsection 6 amended

### 123.181 Prohibited acts.

1. A holder of any class "B" wine permit shall not sell wine except wine which is purchased from a person holding a class "A" wine permit and on which the tax imposed by section 123.183 has been paid or wine purchased from a manufacturer of native wines.

2. A class "A" wine permittee shall not sell wine on credit to a retail liquor licensee or wine permittee for a period exceeding thirty days from date of delivery.

89 Acts, ch 252, §5 HF 758  
 Subsection 3 stricken

## CHAPTER 125

### CHEMICAL SUBSTANCE ABUSE

#### 125.2 Definitions.

For purposes of this chapter, unless the context clearly indicates otherwise:

1. "*Chemical dependency*" means an addiction or dependency, either physical or psychological, on a chemical substance. Persons who take medically prescribed drugs shall not be considered chemically dependent if the drug is medically prescribed and the intake is proportionate to the medical need.

2. "*Chemical substance*" means alcohol, wine, spirits, and beer as defined in chapter 123 and drugs as defined in section 203B.2, subsection 7, which when used improperly could result in chemical dependency.

3. "*Chief medical officer*" means the medical director in charge of a public or private hospital, or the director's physician-designee. This chapter does not negate the authority otherwise reposed by chapter 226 in the respective superintendents of the state mental health institutes to make decisions regarding the appropriateness of admissions or discharges of patients of those institutes, however, it is the intent of this chapter that a superintendent who is not a licensed physician shall be guided in these decisions by the chief medical officer of the institute.

4. "*Clerk*" means the clerk of the district court.

5. "*Commission*" means the commission on substance abuse within the department.

6. "*Department*" means the Iowa department of public health.

7. "*Director*" means the director of the Iowa department of public health.

8. "*Facility*" means an institution, a detoxification center, or an installation providing care, maintenance and treatment for substance abusers licensed by the department under section 125.13, hospitals licensed under chapter 135B, or the state mental health institutes designated by chapter 226.

9. "*Incapacitated by a chemical substance*" means that a person, as a result of the use of a chemical substance, is unconscious or has the person's judgment otherwise so impaired that the person is incapable of realizing and making a rational decision with respect to the need for treatment.

10. "*Incompetent person*" means a person who has been adjudged incompetent by a court of law.

11. "*Interested person*" means a person who, in the discretion of the court, is legitimately concerned that a respondent receive substance abuse treatment services.

12. *"Intoxicated person"* means a person whose mental or physical functioning is substantially impaired as a result of the use of a chemical substance.

13. *"Residence"* means the place where a person resides. For the purpose of determining which Iowa county, if any, is liable pursuant to this chapter for payments of costs attributable to its residents, the following rules shall apply:

a. If a person claims an Iowa homestead, then the person's residence shall be in the county where that homestead is claimed, irrespective of any other factors.

b. If paragraph "a" does not apply, and the person continuously has been provided or has maintained living quarters within any county of this state for a period of not less than one year, whether or not at the same location within that county, then the person's residence shall be in that county, irrespective of other factors. However, this paragraph shall not apply to unemancipated persons under eighteen years of age who are wards of this state.

c. If paragraphs "a" and "b" do not apply, or, if the person is under eighteen years of age, is unemancipated, and is a ward of this state, then the person shall be unclassified with respect to county of residence, and payment of all costs shall be made by the department as provided in this chapter.

d. An unemancipated person under eighteen years of age who is not a ward of the state shall be deemed to reside where the parent having legal custody, or the legal guardian, or legal custodian of that person has residence as determined according to this subsection.

e. The provisions of this subsection shall not be used in any case to which section 125.43 is applicable.

14. *"Respondent"* means a person against whom an application is filed under section 125.75.

15. *"Substance abuser"* means a person who habitually lacks self-control as to the use of chemical substances or uses chemical substances to the extent that the person's health is substantially impaired or endangered or that the person's social or economic function is substantially disrupted.

89 Acts, ch 197, §21 HF 343  
Subsection 2 amended and subsections renumbered to alphabetize

### **125.7 Duties of the commission.**

The commission shall:

1. Approve the comprehensive substance abuse program, developed by the department pursuant to sections 125.1 to 125.43.

2. Advise the department on policies governing the performance of the department in the discharge of any duties imposed on it by law.

3. Advise or make recommendations to the governor and the general assembly relative to substance abuse treatment, intervention and education and prevention programs in this state.

4. Promulgate rules for subsections 1 and 6 and review other rules necessary to carry out the provisions of this chapter, subject to review in accordance with chapter 17A.

5. Investigate the work of the department relating to substance abuse, and for this purpose it shall have access at any time to all books, papers, documents and records of the department.

6. Consider and approve or disapprove all applications for a license and all cases involving the renewal, denial, suspension or revocation of a license.

7. Act as the appeal board regarding funding decisions made by the department.

89 Acts, ch 243, §1 HF 344  
Subsection 3 stricken and former subsections 4-8 renumbered 3-7

### **125.8 Deputy director's duty. Repealed by 89 Acts, ch 243, §6. HF 344**

### **125.13 Programs licensed—exceptions.**

1. Except as provided in subsection 2 of this section, a person may not maintain or conduct any chemical substitutes or antagonists program, residential program

or nonresidential outpatient program, the primary purpose of which is the treatment and rehabilitation of substance abusers without having first obtained a written license for the program from the department.

Three types of licenses may be issued by the department. A renewable license may be issued for one or two years. Treatment programs applying for their initial license may be issued a license for two hundred seventy days. A license issued for two hundred seventy days shall not be renewed or extended.

2. The licensing requirements of this chapter do not apply to any of the following:

a. A hospital providing care or treatment to substance abusers licensed under chapter 135B which is accredited by the joint commission on the accreditation of health care organizations, the commission on accreditation of rehabilitation facilities, the American osteopathic association, or another recognized organization approved by the commission. All survey reports from the accrediting or licensing body must be sent to the department.

b. Any practitioner of medicine and surgery or osteopathic medicine and surgery, in the practitioner's private practice. However, a program shall not be exempted from licensing by the commission by virtue of its utilization of the services of a medical practitioner in its operation.

c. Private institutions conducted by and for persons who adhere to the faith of any well recognized church or religious denomination for the purpose of providing care, treatment, counseling, or rehabilitation to substance abusers and who rely solely on prayer or other spiritual means for healing in the practice of religion of such church or denomination.

d. A program that provides only education, prevention, referral or post treatment services.

e. Alcoholics anonymous.

f. Individuals in private practice who are providing substance abuse treatment services independent from a program that is required to be licensed under subsection 1.

g. Intervention and referral programs which are financed and managed by a county or counties, are staffed by county employees, and do not receive state payments pursuant to a contract under section 125.44.

h. Voluntary, nonprofit groups whose funding is provided solely from nontax sources.

89 Acts, ch 243, §2 HF 344

Subsection 2, paragraph a amended

#### **125.14 Licenses—renewal—fees.**

The commission shall meet to consider all cases involving issuance, denial, suspension, or revocation of a license. The department shall issue a license to an applicant who the commission determines meets the licensing requirements of this chapter. Licenses shall expire no later than two years from the date of issuance and shall be renewed upon timely application made in the same manner as for original issuance of a license unless notice of nonrenewal is given to the licensee at least thirty days prior to the expiration of the license. The department shall not charge a fee for licensing or renewal of programs contracting with the department for provision of treatment services. A fee may be charged to other licensees.

89 Acts, ch 243, §3 HF 344

Section amended

#### **125.44 Agreements with facilities—liability for costs.**

The director may, consistent with the comprehensive substance abuse program, enter into written agreements with a facility as defined in section 125.2 to pay for one hundred percent of the cost of the care, maintenance and treatment of a

substance abuser, except when section 125.43A applies. All payments for state patients shall be made in accordance with the limitations of this section. Such contracts shall be for a period of no more than one year.

The contract may be in the form and contain provisions as agreed upon by the parties. The contract shall provide that the facility shall admit and treat substance abusers regardless of where they have residence. If one payment for care, maintenance, and treatment is not made by the patient or those legally liable for the patient, the payment shall be made by the department directly to the facility. Payments shall be made each month and shall be based upon the rate of payment for services negotiated between the department and the contracting facility. If a facility projects a temporary cash flow deficit, the department may make cash advances at the beginning of each fiscal year to the facility. The repayment schedule for advances shall be part of the contract between the department and the facility. This section does not pertain to patients treated at the mental health institutes.

If the appropriation to the department is insufficient to meet the requirements of this section, the department shall request a transfer of funds and section 8.39 shall apply.

The substance abuser is legally liable to the facility for the total amount of the cost of providing care, maintenance, and treatment for the substance abuser while a voluntary or committed patient in a facility. This section does not prohibit any individual from paying any portion of the cost of treatment.

The department is liable for the cost of care, treatment, and maintenance of a substance abuser admitted to the facility voluntarily or pursuant to section 125.75, 125.81, or 125.91 or section 321J.3 or 204.409, subsection 2 only to those facilities that have a contract with the department under this section, only for the amount computed according to and within the limits of liability prescribed by this section, and only when the substance abuser is unable to pay the costs and there is no other person, firm, corporation or insurance company bound to pay the costs.

The department's maximum liability for the costs of care, treatment and maintenance of substance abusers in a contracting facility is limited to the total amount agreed upon by the parties and specified in the contract under this section.

89 Acts, ch 243, §4, 5 HF 344  
Former unnumbered paragraph 4 stricken  
Unnumbered paragraph 4 (formerly 5) amended

### **125.55 Audits.**

All licensed substance abuse programs are subject to annual audit either by the auditor of state or in lieu of the examination by the auditor of state the substance abuse program may contract with or employ certified public accountants to conduct the audit, in accordance with sections 11.6 and 11.19. The audit format shall be as prescribed by the auditor of state. The certified public accountant shall submit a copy of the audit to the director. A licensed substance abuse program is also subject to special audits as the director requests. The licensed substance abuse program or the department shall pay all expenses incurred by the auditor of state in conducting an audit under this section.

89 Acts, ch 264, §5 HF 451  
Section amended

### **125.75A Involuntary commitment or treatment of minors—jurisdiction.**

The juvenile court has exclusive original jurisdiction in proceedings concerning a minor for whom an application for involuntary commitment or treatment is filed under section 125.75. In proceedings under this division concerning a minor's involuntary commitment or treatment, the terms "court", "judge", "referee", or "clerk" mean the juvenile court, judge, referee, or clerk.

89 Acts, ch 283, §1 SF 540  
NEW section

## CHAPTER 135

## IOWA DEPARTMENT OF PUBLIC HEALTH

Targeted case management program for children and pregnant women  
to be expanded to entire state, and evaluated;  
89 Acts, ch 304, §204 SF 538

**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 federal Social Security Act. The department shall provide technical assistance to encourage the coordination and collaboration of state agencies in developing outreach centers which provide publicly supported services for pregnant women, infants, and children. The department shall work in cooperation with the legislative fiscal bureau in monitoring the effectiveness of the maternal and child health centers, including the provision of transportation for patient appointments and the keeping of scheduled appointments.

20. Establish, publish, and enforce rules requiring prompt reporting of methemoglobinemia, pesticide poisoning, and the reportable poisonings and illnesses established pursuant to section 139.35.

21. Collect and maintain reports of pesticide poisonings and other poisonings, illnesses, or injuries caused by selected chemical or physical agents, including methemoglobinemia and pesticide and fertilizer hypersensitivity; and compile and publish, annually, a statewide and county-by-county profile based on the reports.

22. Adopt rules which require personnel of a licensed hospice, of a homemaker-home health aide provider agency which receives state homemaker-home health aide funds, or of an agency which provides respite care services and receives funds to complete a minimum of two hours of training concerning acquired immune deficiency syndrome-related conditions through a program approved by the department. The rules shall require that new employees complete the training within six months of initial employment and existing employees complete the training on or before January 1, 1989.

23. Adopt rules which require all emergency medical services personnel, firefighters, and law enforcement personnel to complete a minimum of two hours of training concerning acquired immune deficiency syndrome-related conditions and the prevention of human immunodeficiency virus infection.

89 Acts, ch 304, §103 SF 538  
Subsection 19 amended

### **135.13 Office of rural health established—duties.**

1. The office of rural health is established within the department. There is established an advisory committee to the office of rural health consisting of one representative, approved by the respective agency, of each of the following agencies: the department of human services, the department of agriculture and land stewardship, the Iowa department of public health, the department of inspections and appeals, the national institute for rural health policy, the rural health resource center, the institute of agricultural medicine and occupational health, the Iowa state association of counties, and the health policy corporation of Iowa. The governor shall appoint a representative of each of two farm organiza-

tions active within the state, a representative of an agricultural business in the state, a practicing rural family physician, and a rural health practitioner who is not a physician as members of the advisory committee. Two state senators appointed by the majority leader of the senate, and two state representatives appointed by the speaker of the house of representatives shall also be members of the advisory committee. Of the members appointed by the majority leader of the senate and the speaker of the house of representatives, not more than one from each house shall be a member of the same political party.

2. The office of rural health shall do all of the following:

a. Provide technical assistance grants to rural communities and counties exploring alternative means of delivering rural health services, including but not limited to hospital conversions, cooperative agreements among hospitals, physician and health practitioner support, public health services, emergency medical services, medical assistance facilities, rural health care clinics, and alternative means which may be included in the long-term community health services and developmental plan developed under this paragraph or in a long-term plan developed through the rural health transition grant program pursuant to the federal Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, §4005(e). The office of rural health shall encourage the local boards of health and hospital governing boards to adopt a long-term community health services and developmental plan as provided in section 135B.33 and perform the duties required of the Iowa department of public health in section 135B.33.

b. Provide competitive research grants, to be awarded by the advisory committee, to conduct economic analyses of the effects of health care restructuring models on rural communities, including but not limited to the employment effects on the community of redirecting funds to new areas of service, the overall effects of redirection of the funds on the number of health care dollars expended within the rural community, and the benefit to the health of patients of redirecting the funds.

c. The office of rural health shall make a report to the general assembly regarding the impact of the current compensation structure under medicare on rural hospitals and other health care providers, shall provide information regarding the current compensation system to Iowa's congressional delegation, and shall make recommendations to the general assembly regarding recommendations to be made to Iowa's congressional delegation to improve the compensation structure.

d. For the purposes of this section, "*medicare*" means the program of health insurance established under Title XVIII of the federal Social Security Act.

e. Provide technical assistance to assist rural communities in improving medicare reimbursements through the establishment of rural health clinics, defined pursuant to 42 U.S.C. §1395(x), and distinct part skilled nursing facility beds.

f. Coordinate services to provide research for the following items:

(1) Examination of the prevalence of rural occupational health injuries in the state.

(2) Assessment of training and continuing education available through local hospitals and others relating to diagnosis and treatment of diseases associated with rural occupational health hazards.

(3) Determination of continuing education support necessary for rural health practitioners to diagnose and treat illnesses caused by exposure to rural occupational health hazards.

(4) Determination of the types of actions that can help prevent agricultural accidents.

(5) Surveillance and reporting of disabilities suffered by persons engaged in agriculture resulting from diseases or injuries, including identifying the amount and severity of agricultural-related injuries and diseases in the state, identifying

causal factors associated with agricultural-related injuries and diseases, and indicating the effectiveness of intervention programs designed to reduce injuries and diseases.

89 Acts, ch 304, §702 SF 538  
NEW section

### **135.22 Central registry for brain injuries.**

1. As used in this section, section 225C.23, and section 601K.80, "*brain injury*" means clinically evident brain damage or spinal cord injury resulting directly or indirectly from trauma, infection, anoxia, or vascular lesions not primarily related to degenerative or aging processes, which temporarily or permanently impairs a person's physical or cognitive functions.

2. The director shall establish and maintain a central registry of persons with brain injuries in order to facilitate the provision of appropriate rehabilitative services to the persons by the department and other state agencies. For a patient who is not admitted to a hospital but is treated in a physician's office, physicians shall report a brain injury to the director within seven days after identification of the person sustaining a brain injury. Hospitals shall report a brain injury to the director no later than forty-five days after the close of a quarter in which the patient was discharged. The report shall contain the name, age and residence of the person, the date, type, and cause of the brain injury, and additional information as the director requires, except that where available, physicians and hospitals shall report the Glasgow coma scale. The director shall consult with health care providers concerning the availability of additional relevant information. The department shall maintain the confidentiality of all information which would identify any person named in a report. However, the identifying information may be released for bona fide research purposes if the confidentiality of the identifying information is maintained by the researchers, or the identifying information may be released by the person with the brain injury or by the person's guardian or, if the person is a minor, by the person's parent or guardian.

89 Acts, ch 320, §10 HF 775  
NEW section

### **135.23 through 135.27 Repealed by 61GA, ch 375, §29.**

### **135.28 State emergency medical board.**

A state emergency medical board is established to formulate policy and guidelines for the operations of local emergency medical boards, and to act if a local board does not exist.

The state board is comprised of medical professionals and lay persons appointed by the director and the council on human services according to rules adopted by the department. The state board and its members are not liable, jointly or severally, for actions or omissions taken or made in the official discharge of their duties, except those acts or omissions constituting willful or wanton misconduct.

89 Acts, ch 178, §1 HF 585  
NEW section

### **135.29 Local emergency medical board.**

1. Each county in this state may establish and fund a local emergency medical board. The local board shall be comprised of medical professionals and lay persons appointed pursuant to the guidelines established by the state emergency medical board.

2. The local board may act as a surrogate decision maker for patients incapable of making their own medical care decisions if no other surrogate decision maker is available to act. The local board may exercise decision-making authority in situations where there is sufficient time to review the patient's condition, and a reasonably prudent person would consider a decision to be medically necessary.

Such medically necessary decisions shall constitute good cause for subsequently filing a petition in the district court for appointment of a guardian pursuant to chapter 633, but the local board shall continue to act in the patient's best interests until a guardian is appointed.

3. The local board and its members shall not be held liable, jointly or severally, for any actions or omissions taken or made in the official discharge of their duties, except those acts or omissions constituting willful or wanton misconduct. A physician or other health care provider who acts on a decision or directive of the local board or state board shall not be held liable for any damages resulting from that act, unless such physician's or other health care provider's actions or omissions constitute negligence in the practice of the profession or occupation, or willful or wanton misconduct.

89 Acts, ch 178, §3 HF 585  
NEW section

### **135.37 Tattooing—permit requirement—penalty.**

1. A person shall not own, control and lease, act as an agent for, conduct, manage, or operate an establishment to practice the art of tattooing or engage in the practice of tattooing without first applying for and receiving a permit from the Iowa department of public health.

2. A minor shall not obtain a tattoo and a person shall not provide a tattoo to a minor. For the purposes of this section, "*minor*" means an unmarried person who is under the age of eighteen years.

3. A person who fails to meet the requirements of subsection 1 or a person providing a tattoo to a minor is guilty of a serious misdemeanor.

4. The Iowa department of public health shall:

a. Adopt rules pursuant to chapter 17A and establish and collect all fees necessary to administer this section. The provisions of chapter 17A, including licensing provisions, judicial review, and appeal, shall apply to this chapter.

b. Establish minimum safety and sanitation criteria for the operation of tattooing establishments.

5. If the Iowa department of public health determines that a provision of this section has been or is being violated, the department may order that a tattooing establishment not be operated until the necessary corrective action has been taken. If the establishment continues to be operated in violation of the order of the department, the department may request that the county attorney or the attorney general make an application in the name of the state to the district court of the county in which the violations have occurred for an order to enjoin the violations. This remedy is in addition to any other legal remedy available to the department.

89 Acts, ch 154, §1 SF 122  
NEW section

### **135.46 Committee established.**

There is established in the department a renal disease advisory committee to advise the department on the administration of the program, and to adjudicate appeals concerning the denial, suspension, or revocation of financial assistance.

1. The committee shall consist of thirteen members appointed by the director. Each member shall be appointed for a term of four years or until a successor is appointed and qualifies beginning July 1 of the year of appointment. The director shall fill a vacancy occurring before the expiration of a term by the appointment of a person who represents the same area pursuant to subsection 2, which the person who caused the vacancy represented.

2. The committee shall consist of:

a. Two physicians representing the Iowa medical profession and who are actively involved in renal dialysis or transplantation.

b. One registered nurse representing nephrology nurses.

c. One social worker representing social workers who are actively involved in patient counseling.

d. One member representing the professional staff of the kidney foundation of Iowa.

e. Two members who are hospital administrators representing Iowa hospitals. One of the members shall represent a dialysis or transplant facility and the other member shall represent a facility that does not provide dialysis or transplant services.

f. One social security administrator representing those actively involved in patient or provider reimbursement.

g. One member representing an Iowa medicare intermediary and involved in third-party payments.

h. One member representing the end-stage renal disease network as established by federal law.

i. One member representing the insurance division of the department of commerce of the state.

j. Two members representing the consumers of health care in Iowa.

3. The committee shall meet as frequently as the director deems necessary, but not less than annually. Special meetings may be called by the director or upon written request by four of the members of the committee. The written request shall include the reason for the meeting. The committee shall elect the officers deemed necessary. A majority of the members is a quorum. The concurrence of at least the quorum is necessary for the committee to render a determination or decision. The committee members shall be reimbursed for actual and necessary expenses incurred in attending meetings of the committee or for discharging their official duties at places outside their county of residence.

89 Acts, ch 83, §26 SF 112  
 Subsection 2, paragraph h amended

**135.93 Scope of license—duration—fees.**

Licenses for hospice programs shall be issued only for the premises, person, hospital, or facility named in the application and are not transferable or assignable. A license, unless sooner suspended or revoked, shall expire two years after the date of issuance and shall be renewed biennially upon an application by the licensee. Application for renewal shall be made in writing to the department at least thirty days prior to the expiration of the license. The fee for a license renewal shall be determined by the department. Licensed hospice programs which have allowed their licenses to lapse through failure to make timely application for renewal shall pay an additional fee of twenty-five percent of the biennial license fee.

89 Acts, ch 122, §1 HF 379  
 Section amended

**CHAPTER 135C**

**HEALTH CARE FACILITIES**

**135C.2 Purpose—rules—special classifications—protection and advocacy agency.**

1. The purpose of this chapter is to promote and encourage adequate and safe care and housing for individuals who are aged or who, regardless of age, are infirm, convalescent, or mentally or physically dependent, by both public and private agencies by providing for the adoption and enforcement of rules and standards:

a. For the housing, care and treatment of individuals in health care facilities, and

b. For the location, construction, maintenance, renovation, and sanitary operation of such health care facilities which will promote safe and adequate care of individuals in such homes so as to further the health, welfare and safety of such individuals.

2. Rules and standards prescribed, promulgated and enforced under this chapter shall not be arbitrary, unreasonable or confiscatory and the department or agency prescribing, promulgating or enforcing such rules or standards shall have the burden of proof to establish that such rules or standards meet such requirements and are consistent with the economic problems and conditions involved in the care and housing of persons in health care facilities.

3. 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.

The rules adopted for intermediate care facilities for the mentally retarded shall be consistent with, but no more restrictive than, the federal standards for intermediate care facilities for the mentally retarded established pursuant to the federal Social Security Act, §1905(c)(d), as codified in 42 U.S.C. §1396d, in effect on January 1, 1989. However, in order to be licensed the state fire marshal must certify to the department an intermediate care facility for the mentally retarded as meeting the applicable provisions of either the health care occupancies chapter or the residential board and care chapter of the life safety code of the national fire protection association, 1985 edition. The department shall adopt additional rules for intermediate care facilities for the mentally retarded pursuant to section 135C.14, subsection 8.

Notwithstanding the limitations set out in this subsection regarding rules for intermediate care facilities for the mentally retarded, the department shall consider the federal interpretive guidelines issued by the federal health care financing administration when interpreting the department's rules for intermediate care facilities for the mentally retarded. This use of the guidelines is not subject to the rulemaking provisions of sections 17A.4 and 17A.5, but the guidelines shall be published in the Iowa administrative bulletin and the Iowa administrative code.

4. The protection and advocacy agency designated in the state, under Pub. L. No. 98-527, the Developmental Disabilities Act of 1984, Pub. L. No. 99-319, the Protection and Advocacy for Mentally Ill Individuals Act of 1986, and Pub. L. No. 100-146, the federal Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, is recognized as an agency legally authorized and constituted to ensure the implementation of the purposes of this chapter for populations under its authority and in the manner designated by Pub. L. No. 98-527, Pub. L. No. 99-319, and Pub. L. No. 100-146 and in the assurances of the governor of the state.

5. The department shall establish a special classification within the residential care facility category in order to foster the development of residential care

facilities which serve persons with mental retardation, chronic mental illness, or a developmental disability, as defined under section 225C.26, and which contain five or fewer residents. A facility within the special classification established pursuant to this subsection is exempt from the requirements of section 135.63. The department shall adopt rules which are consistent with rules previously developed for the waiver demonstration project pursuant to 1986 Iowa Acts, chapter 1246, section 206, and which include all of the following provisions:

a. A facility provider under the special classification must comply with rules adopted by the department for the special classification. However, a facility provider which has been accredited by the accreditation council for services to persons with mental retardation and other developmental disabilities shall be deemed to be in compliance with the rules adopted by the department.

b. A facility must be located in an area zoned for single or multiple-family housing and must be constructed in compliance with applicable local housing codes and the rules adopted for the special classification by the state fire marshal in accordance with the concept of the least restrictive environment for the facility residents and the applicable sections of chapter twenty-one of the national fire protection association life safety code of 1988.

c. Facility provider plans for the facility's accessibility to residents must be in place.

d. A written plan must be in place which documents that a facility meets the needs of the facility's residents pursuant to individual program plans developed according to age appropriate and least restrictive program requirements.

e. A written plan must be in place which documents that a facility's residents have reasonable access to employment or employment-related training, education, generic community resources, and integrated opportunities to promote interaction with the community.

f. A committee of not more than nine members must be established to provide monitoring of the special classification and the rules and procedures adopted regarding the special classification. The recommendations of the committee are subject to the approval of the director. The committee shall include but is not limited to representatives designated by each of the following:

- (1) The association for retarded citizens of Iowa.
- (2) The Iowa association of rehabilitation and residential facilities.
- (3) The governor's planning council for developmental disabilities.
- (4) The mental health and mental retardation commission.
- (5) The alliance for the mentally ill of Iowa.
- (6) The Iowa state association of counties.
- (7) The state fire marshal.

g. The facilities licensed under this subsection shall be eligible for funding utilized by other licensed residential care facilities for the mentally retarded, or licensed residential care facilities for the mentally ill, including but not limited to funding under or from the federal social services block grant, the state supplementary assistance program, state mental health and mental retardation services funds, and county funding provisions.

89 Acts, ch 115, §1 SF 534; 89 Acts, ch 269, §1 HF 692  
 Subsection 3, NEW unnumbered paragraphs 2 and 3  
 NEW subsection 5

### 135C.14 Rules.

The department shall, in accordance with chapter 17A, adopt and enforce rules setting minimum standards for health care facilities. In so doing, the department may adopt by reference, with or without amendment, nationally recognized standards and rules, which shall be specified by title and edition, date of publication, or similar information. The rules and standards required by this section shall be formulated in consultation with the director of human services or

the director's designee and with industry, professional and consumer groups affected thereby, and shall be designed to further the accomplishment of the purposes of this chapter and shall relate to:

1. Location and construction of the facility, including plumbing, heating, lighting, ventilation, and other housing conditions, which shall ensure the health, safety and comfort of residents and protection from fire hazards. The rules of the department relating to protection from fire hazards and fire safety shall be promulgated by the state fire marshal, and shall be in keeping with the latest generally recognized safety criteria for the facilities covered of which the applicable criteria recommended and published from time to time by the national fire protection association are prima-facie evidence.

2. Number and qualifications of all personnel, including management and nursing personnel, having responsibility for any part of the care provided to residents.

3. All sanitary conditions within the facility and its surroundings including water supply, sewage disposal, food handling, and general hygiene, which shall ensure the health and comfort of residents.

4. Diet related to the needs of each resident and based on good nutritional practice and on recommendations which may be made by the physician attending the resident.

5. Equipment essential to the health and welfare of the resident.

6. Requirements that a minimum number of registered or licensed practical nurses and nurses' aides, relative to the number of residents admitted, be employed by each licensed facility. Staff-to-resident ratios established under this subsection need not be the same for facilities holding different types of licenses, nor for facilities holding the same type of license if there are significant differences in the needs of residents which the respective facilities are serving or intend to serve.

7. Social services and rehabilitative services provided for the residents.

8. Facility policies and procedures regarding the treatment, care, and rights of residents. The rules shall apply the federal resident's rights contained in the federal Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, and the regulations adopted pursuant to the Act and contained in 42 C.F.R. §483.10, 483.12, 483.13, and 483.15, as amended to February 2, 1989, to all health care facilities as defined in this chapter and shall include procedures for implementing and enforcing the federal rules. The department shall also adopt rules relating to the following:

a. The transfer of residents to other rooms within a facility.

b. The involuntary discharge or transfer of residents from a facility including provisions for notice and agency hearings and for the development of a patient discharge or transfer plan and for providing counseling services to a patient being discharged or transferred.

c. The required holding of a bed for a resident under designated circumstances upon payment of a prescribed charge for the bed.

d. The notification of care review committees by the department of all complaints relating to health care facilities and the involvement of the care review committees in resolution of the complaints.

e. For the recoupment of funds or property to residents when the resident's personal funds or property have been used without the resident's written consent or the written consent of the resident's guardian.

89 Acts, ch 241, §1, 2 SF 31

Subsection 8, unnumbered paragraph 1 amended

Subsection 8, NEW paragraph e

### **135C.37 Complaints alleging violations—confidentiality—reports.**

A person may request an inspection of a health care facility by filing with the department, care review committee of the facility, or the long-term care resident's

advocate as defined in section 249D.4, subsection 15, a complaint of an alleged violation of applicable requirements of this chapter or the rules adopted pursuant to this chapter. A person alleging abuse or neglect of a resident with a developmental disability or with mental illness may also file a complaint with the protection and advocacy agency designated pursuant to section 135B.9 or section 135C.2. A copy of a complaint filed with the care review committee or the long-term care resident's advocate shall be forwarded to the department. The complaint shall state in a reasonably specific manner the basis of the complaint, and a statement of the nature of the complaint shall be delivered to the facility involved at the time of the inspection. The name of the person who files a complaint with the department, care review committee, or the long-term care resident's advocate shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employees involved in the investigation of the complaint.

Upon the request of a person filing a complaint under this section, the department shall mail to the person without charge, a copy of the report of the investigation performed in response to the complaint and a copy of the most recent final findings with respect to compliance with licensing requirements on the part of the facility against which the complaint was filed.

89 Acts, 241, §3 SF 31; 89 Acts, ch 321, §28 HF 779

Section amended

NEW unnumbered paragraph 2

### **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 complaint investigation shall include, at a minimum, an interview with the complainant and the victim of the alleged violation, if the victim is able to communicate, if the complainant or victim is identifiable, and if the complainant or victim is available. Additionally, witnesses who have knowledge of facts related to the complaint shall be interviewed, if identifiable and available. The names of witnesses may be obtained from the complainant or the victim. The files may be reviewed to ascertain the names of staff persons on duty at the time relevant to the complaint. The department shall apply a preponderance of the evidence standard in determining whether or not a complaint is substantiated. For the purposes of this subsection, "*a preponderance of the evidence standard*" means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations are more likely true than not true. "*A preponderance of the evidence standard*" does not require that the investigator personally witnessed the alleged violation. 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. Upon conclusion of the investigation, the department shall notify the complainant of the results. The notification shall include a statement of the factual findings as determined by the investigator, the statutory or regulatory provisions alleged to have been violated, and a summary of the reasons for which the complaint was or was not substantiated. A person who is dissatisfied with any

aspect of the department's handling of the complaint may contact the long-term care resident's advocate, established pursuant to section 249D.42, or may contact the protection and advocacy agency designated pursuant to section 135C.2 if the complaint relates to a resident with a developmental disability or a mental illness.

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.

89 Acts, ch 241, §4 SF 31  
Subsection 1 amended

### **135C.39 No advance notice of inspection—exception—civil penalty.**

No advance notice of an on-site inspection made pursuant to section 135C.38 shall be given the health care facility or the licensee thereof unless previously and specifically authorized in writing by the director or required by federal law. The person in charge of the facility shall be informed of the substance of the complaint at the commencement of the on-site inspection.

A person who notifies, or causes to be notified, a health care facility, of the time and date on which a survey or on-site inspection is scheduled, is subject to a civil penalty of not less than one thousand dollars nor more than two thousand dollars.

89 Acts, ch 241, §5 SF 31  
Unnumbered paragraph 2 repealed when federal government provides penalty for notification or causing the notification of a health care facility of the time and date on which a survey or on-site inspection is scheduled; 89 Acts, ch 241, §7 SF 31

NEW unnumbered paragraph 2

## **CHAPTER 135D**

### **MOBILE HOMES AND PARKS**

#### **135D.22 Annual tax—credit.**

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, 1988 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	3.0 cents
6,000— 6,999.99	6.0
7,000— 7,999.99	9.0
8,000— 9,999.99	12.0
10,000—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, except as follows:

a. For the sixth through ninth years after the year of manufacture the annual tax is ninety percent of the tax computed according to subsection 1 or 2 of this section, whichever is applicable.

b. For all mobile homes ten or more years after the year of manufacture the annual tax is eighty percent of the tax computed according to subsection 1 or 2 of this section, whichever is applicable.

4. The tax shall be figured to the nearest even whole dollar.

5. A claim for credit for mobile home tax due shall not be paid or allowed unless the claim is actually filed with the county treasurer between January 1 and June 1, both dates inclusive, immediately preceding the fiscal year during which the 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.

89 Acts, ch 190, §1 HF 755

1989 amendment to subsection 3 takes effect July 1, 1990; 89 Acts, ch 190, §2 HF 755

Subsection 3 amended

### **135D.26 Conversion to real property.**

No mobile home shall be assessed for property tax nor be eligible for homestead tax credit or military service tax credit unless:

1. The mobile home owner intends to convert the mobile home to real estate and does so by:

- a. Attaching the mobile home to a permanent foundation.
- b. Modification of the vehicular frame for placement on a permanent foundation.
- c. If a security interest is noted on the certificate of title, tendering to the secured party a mortgage on the real estate upon which the mobile home is to be located in the unpaid amount of the secured debt, and with the same priority as or a higher priority than the secured party's security interest, or obtaining written consent of the secured party to the conversion.

2. After complying with subsection 1, the owner shall notify the assessor who shall inspect the new premises for compliance. If a security interest is noted on the certificate of title, the assessor shall require an affidavit, as defined in section 622.85, from the mobile home owner, declaring that the owner has complied with subsection 1, paragraph "c", and setting forth the method of compliance.

a. If compliance with subsection 1, paragraph "c", has been accomplished by the secured party accepting the tender of a mortgage, the assessor shall collect the mobile home vehicle title and enter the property upon the tax rolls.

b. If compliance with subsection 1, paragraph "c", has been accomplished by the secured party consenting to the conversion without accepting a mortgage, the secured party shall retain the mobile home vehicle title and the assessor shall note the conversion on the assessor's records and enter the property upon the tax rolls.

89 Acts, ch 260, §1 SF 291

Subsection 2 amended

### **135D.27 Conversion to mobile home.**

1. A mobile home converted to real estate under section 135D.26 may be reconverted to a mobile home as provided in this section.

2. If the vehicular frame of the former mobile home can be modified to return it to the status of a mobile home, the owner or a secured party holding a mortgage or certificate of title pursuant to section 135D.26 who has obtained possession of the mobile home may apply to the county treasurer as provided in section 321.20 for a certificate of title for the mobile home. If a mortgage exists on the real estate, a security interest in the mobile home shall be given to a secured party not applying for reconversion and noted on the certificate of title with the same priority or a higher priority than the secured party's mortgage interest. A

reconversion shall not occur without the written consent of every secured party holding a mortgage or certificate of title.

If the secured party has elected to retain the mobile home vehicle title pursuant to section 135D.26, subsection 2, paragraph "b", an owner applying for reconversion shall present to the county treasurer written consent to the reconversion from all secured parties and an affirmation from the secured party holding the title that the title is in its possession and is intact. Upon receipt of the affirmation, the county treasurer shall notify the assessor of the reconversion, which notification constitutes compliance by the owner with subsection 3.

3. After complying with subsection 2 and receipt of the title, the owner shall notify the assessor of the reconversion. The assessor shall remove the assessed valuation of the mobile home from assessment rolls as of the succeeding January 1 when the mobile home becomes subject to taxation as provided under section 135D.24.

89 Acts, ch 260, §2 SF 291  
Subsection 2 amended

## CHAPTER 135H

### PSYCHIATRIC MEDICAL INSTITUTIONS FOR CHILDREN

Provisional licenses; reimbursement rate; rules; expansion of medical assistance;  
89 Acts, ch 283, §33, 34, 35 SF540

#### 135H.1 Definitions.

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

1. "Department" means the department of inspections and appeals.
2. "Direction" means authoritative policy or procedural guidance for the accomplishment of a function or an activity.
3. "Licensee" means the holder of a license issued to operate a psychiatric medical institution for children.
4. "Medical care plan" means a plan of care and services designed to eliminate the need for inpatient care by improving the condition of a child. Services must be based upon a diagnostic evaluation, which includes an examination of the medical, psychological, social, behavioral, and developmental aspects of the child's situation, reflecting the need for inpatient care.
5. "Nonsecure institution" means a physically unrestricting institution, place, building, or agency in which a child may be placed pursuant to a dispositional court order made in accordance with the provisions of chapter 232.
6. "Nursing care" means services which are provided under the direction of a physician or registered nurse.
7. "Physician" means a person licensed under chapter 148 or 150A.
8. "Psychiatric medical institution for children" or "psychiatric institution" means a nonsecure institution providing more than twenty-four hours of continuous care involving long-term psychiatric services to three or more children in residence for expected periods of fourteen or more days for diagnosis and evaluation or for expected periods of ninety days or more for treatment.
9. "Psychiatric services" means services provided under the direction of a physician which address mental, emotional, medical, or behavioral problems.
10. "Mental health professional" means an individual who has all of the following qualifications:
  - a. The individual holds at least a master's degree in a mental health field, including but not limited to, psychology, counseling and guidance, nursing, and social work, or the individual is a physician.

b. The individual holds a current Iowa license if practicing in a field covered by an Iowa licensure law.

c. The individual has at least two years of post-degree clinical experience, supervised by another mental health professional, in assessing mental health needs and problems and in providing appropriate mental health services.

11. "Rehabilitative services" means services to encourage and assist restoration of a resident's optimum mental and physical capabilities.

12. "Resident" means a person who is less than twenty-one years of age and has been admitted by a physician to a psychiatric medical institution for children.

13. "Supervision" means direct oversight and inspection of the act of accomplishing a function or activity.

89 Acts, ch 283, §2 SF 540  
NEW section

### 135H.2 Purpose.

The purpose of this chapter is to provide for the development, establishment, and enforcement of basic standards for the operation, construction, and maintenance of a psychiatric medical institution for children which will ensure the safe and adequate diagnosis and evaluation and treatment of the residents.

89 Acts, ch 283, §3 SF 540  
NEW section

### 135H.3 Nature of care.

A psychiatric medical institution for children shall utilize a team of professionals to direct an organized program of diagnostic services, psychiatric services, nursing care, and rehabilitative services to meet the needs of residents in accordance with a medical care plan developed for each resident. Social and rehabilitative services shall be provided under the direction of a qualified mental health professional.

89 Acts, ch 283, §4 SF 540  
NEW section

### 135H.4 Licensure.

A person shall not establish, operate, or maintain a psychiatric medical institution for children unless the person obtains a license for the institution under this chapter and holds a license under section 237.3, subsection 2, paragraph "a", subparagraph (3).

89 Acts, ch 283, §5 SF 540  
Initial, provisional licenses, 89 Acts, ch 283, §33, 35 SF 540  
NEW section

### 135H.5 Application for license.

An application for a license under this chapter shall be submitted on a form requesting information required by the department, which may include affirmative evidence of the applicant's ability to comply with the rules for standards adopted pursuant to this chapter. An application for a license shall be accompanied by the required license fee which shall be credited to the general fund of the state. The initial and annual license fee is twenty-five dollars.

89 Acts, ch 283, §6 SF 540  
NEW section

### 135H.6 Inspection before issuance.

The department shall issue a license to an applicant under this chapter if all the following conditions exist:

1. The department has ascertained that the applicant's medical facilities and staff are adequate to provide the care and services required of a psychiatric institution.

2. The proposed psychiatric institution is accredited to provide psychiatric services by the joint commission on the accreditation of health care organizations under the commission's consolidated standards for residential settings.

3. The applicant complies with applicable state rules and standards for a psychiatric institution adopted by the department in accordance with federal requirements under 42 C.F.R. §441.150-441.156.

4. The applicant has been awarded a certificate of need pursuant to chapter 135.

5. The department of human services has submitted written approval of the application based on the department of human services' determination of need. The department of human services shall identify the location and number of children in the state who require the services of a psychiatric medical institution for children. Approval of an application shall be based upon the location of the proposed psychiatric institution relative to the need for services identified by the department of human services and an analysis of the applicant's ability to provide services and support consistent with requirements under chapter 232, particularly regarding community-based treatment. The department of human services shall not give approval to an application which would cause the total number of beds licensed under this chapter to exceed three hundred sixty beds with not more than three hundred of the beds licensed under chapter 237 before January 1, 1989, and not more than sixty of the beds licensed under chapter 237 after January 1, 1989. If the proposed psychiatric institution is not freestanding from a facility licensed under chapter 135B or 135C, approval under this subsection shall not be given unless the department of human services certifies that the proposed psychiatric institution is capable of providing a resident with a living environment similar to the living environment provided by a licensee which is freestanding from a facility licensed under chapter 135B or 135C. Unless a psychiatric institution was accredited to provide psychiatric services by the joint commission on the accreditation of health care organizations under the commission's consolidated standards for residential settings prior to June 1, 1989, the department of human services shall not approve an application for a license under this chapter until the federal health care financing administration has approved a state Title XIX plan amendment to include coverage of services in a psychiatric medical institution for children.

6. The proposed psychiatric institution is under the direction of an agency which has operated a facility licensed under section 237.3, subsection 2, paragraph "a", subparagraph (3), for three years.

89 Acts, ch 283, §7 SF 540

Report on needs assessment and recommendations; 89 Acts, ch 283, §36 SF 540

NEW section

### **135H.7 Personnel.**

1. A person shall not be allowed to provide services in a psychiatric institution if the person has a disease which is transmissible to other persons through required contact in the workplace, which presents a significant risk of infecting other persons, which presents a substantial possibility of harming other persons, or for which no reasonable accommodation can eliminate the risk of infecting other persons.

2. A person who has been convicted of a criminal act involving a child under a law of any state or who has a record of founded child abuse shall not be licensed, be employed by a licensee, or reside in a licensed home unless the department of human services determines that the crime or founded abuse does not merit prohibition of licensure or employment. In its determination, the department of human services 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 abuses committed by the person involved.

89 Acts, ch 283, §8 SF 540  
NEW section

### 135H.8 Denial, suspension, or revocation of license.

The department may deny an application or suspend or revoke a license if the department finds that an applicant or licensee has failed or is unable to comply with this chapter or the rules establishing minimum standards pursuant to this chapter or if any of the following conditions apply:

1. It is shown that a resident is a victim of cruelty or neglect due to the acts or omissions of the licensee.

2. The licensee has permitted, aided, or abetted in the commission of an illegal act in the psychiatric institution.

3. An applicant or licensee acted to obtain or to retain a license by fraudulent means, misrepresentation, or submitting false information.

4. The licensee has willfully failed or neglected to maintain a continuing in-service education and training program for persons employed by the psychiatric institution.

5. The application involves a person who has failed to operate a psychiatric institution in compliance with the provisions of this chapter.

89 Acts, ch 283, §9 SF 540  
NEW section

### 135H.9 Notice and hearings.

The procedure governing notice and hearing to deny an application or suspend or revoke a license shall be in accordance with rules adopted by the department pursuant to chapter 17A. A full and complete record shall be kept of the proceedings and of any testimony. The record need not be transcribed unless judicial review is sought. A copy or copies of a transcript may be obtained by an interested party upon payment of the cost of preparing the transcript or copies.

89 Acts, ch 283, §10 SF 540  
NEW section

### 135H.10 Rules.

1. The department of inspections and appeals, in consultation with the department of human services and affected professional groups, shall adopt and enforce rules setting out the standards for a psychiatric medical institution for children and the rights of the residents admitted to a psychiatric institution. The department of inspections and appeals and the department of human services shall coordinate the adoption of rules and the enforcement of the rules in order to prevent duplication of effort by the departments and of requirements of the licensee.

2. This chapter shall not be construed as prohibiting the use of funds appropriated for foster care to provide payment to a psychiatric medical institution for children for the financial participation required of a child whose foster care placement is in a psychiatric medical institution for children. In accordance with established policies and procedures for foster care, the department of human services shall act to recover any such payment for financial participation, apply to be named payee for the child's unearned income, and recommend parental liability for the costs of a court-ordered foster care placement in a psychiatric medical institution.

89 Acts, ch 283, §11 SF 540  
See also 89 Acts, ch 283, §33, 34 SF 540  
NEW section

### 135H.11 Complaints alleging violations—confidentiality.

A person may request an inspection of a psychiatric medical institution for children by filing with the department a complaint of an alleged violation of an

applicable requirement of this chapter or a rule adopted pursuant to this chapter. The complaint shall state in a reasonably specific manner the basis of the complaint. A statement of the nature of the complaint shall be delivered to the psychiatric institution involved at the time of or prior to the inspection. The name of the person who files a complaint with the department shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employees involved in the investigation of the complaint.

89 Acts, ch 283, §12 SF 540  
NEW section

### **135H.12 Inspections upon complaints.**

1. Upon receipt of a complaint made in accordance with section 135H.11, the department shall make a preliminary review of the complaint. Unless the department concludes that the complaint is intended to harass a psychiatric institution 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 psychiatric institution which is the subject of the complaint. The department of inspections and appeals may refer to the department of human services any complaint received by the department if the complaint applies to rules adopted by the department of human services. 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. In any case, the complainant shall be promptly informed of the result of any action taken by the department in the matter.

2. An inspection made pursuant to a complaint filed under section 135H.11 need not be limited to the matter or matters referred to in the complaint; however, the inspection shall not be a general inspection unless the complaint inspection coincides with a scheduled general inspection. Upon arrival at the psychiatric institution to be inspected, the inspector shall show identification to the person in charge of the psychiatric institution and state that an inspection is to be made, before beginning the inspection. Upon request of either the complainant or the department, 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 a resident of the psychiatric institution to be inspected would be violated. The dignity of the resident shall be given first priority by the inspector and others.

89 Acts, ch 283, §13 SF 540  
NEW section

### **135H.13 Information confidential.**

1. The department's final findings and the survey findings of the joint commission on the accreditation of health care organizations regarding licensure or program accreditation shall be made available to the public in a readily available form and place. Other information relating to the psychiatric institution is confidential and shall not be made available to the public except in proceedings involving licensure, a civil suit involving a resident, or an administrative action involving a resident.

2. The name of a person who files a complaint with the department shall remain confidential and is not subject to discovery, subpoena, or any other means of legal compulsion for release to a person other than an employee of the department or an agent involved in the investigation of the complaint.

3. Information regarding a resident who has received or is receiving care shall not be disclosed directly or indirectly except as authorized under section 217.30, 232.69, or 237.21.

89 Acts, ch 283, §14 SF 540  
NEW section

#### 135H.14 Judicial review.

Judicial review of the action of the department may be sought pursuant to the Iowa Administrative Procedure Act, chapter 17A. Notwithstanding the Iowa Administrative Procedure Act, a petition for judicial review of the department's actions under this chapter may be filed in the district court of the county in which the related psychiatric medical institution for children is located or is proposed to be located. The status of the petitioner or the licensee shall be preserved pending final disposition of the judicial review.

89 Acts, ch 283, §15 SF 540  
NEW section

#### 135H.15 Penalty.

A person who establishes, operates, or manages a psychiatric medical institution for children without obtaining a license under this chapter commits a serious misdemeanor. Each day of continuing violation following conviction shall be considered a separate offense.

89 Acts, ch 283, §16 SF 540  
NEW section

#### 135H.16 Injunction.

Notwithstanding the existence or pursuit of another remedy, the department may maintain an action for injunction or other process to restrain or prevent the establishment, operation, or management of a psychiatric medical institution for children without a license.

89 Acts, ch 283, §17 SF 540  
NEW section

## CHAPTER 135I

### SWIMMING POOLS AND SPAS

#### 135I.1 Definitions.

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

1. "Department" means the Iowa department of public health.
2. "Local board of health" means a county, city, or district board of health as defined in section 137.2.
3. "Spa" means a bathing facility such as a hot tub or whirlpool designed for recreational or therapeutic use. However, "spa" does not include a facility used under direct supervision of qualified medical personnel.
4. "Swimming pool" means an artificial basin and its appurtenances, either constructed or operated for swimming, wading, or diving, and includes a swimming pool, wading pool, waterslide, or associated bathhouse.

89 Acts, ch 291, §1 HF 373  
NEW section

#### 135I.2 Applicability.

This chapter applies to all swimming pools and spas owned or operated by local or state government, or commercial interests or private entities including, but not limited to, facilities operated by cities, counties, public or private school corporations, hotels, motels, camps, apartments, condominiums, and health or country clubs. This chapter does not apply to facilities intended for single family use. To

avoid duplication and promote coordination of inspection activities, the department may enter into agreements pursuant to chapter 28E with a local board of health or multiple boards of health representing contiguous areas to provide for inspection and enforcement in accordance with this chapter.

89 Acts, ch 291, §2 HF 373  
NEW section

### **135I.3 Registration required.**

A person shall not operate a swimming pool or spa without first having registered with the department. Registration shall be renewed annually.

89 Acts, ch 291, §3 HF 373  
NEW section

### **135I.4 Powers and duties.**

The department is responsible for registering and regulating the operation of swimming pools and spas. The department shall conduct seminars and training sessions, and disseminate information regarding health practices, safety measures, and operating procedures required under this chapter. The department may:

1. Inspect, at the time of installation and periodically thereafter, all swimming pools and spas for the purpose of detecting and eliminating health or safety hazards.
2. Establish minimum safety and sanitation criteria for the operation and use of swimming pools and spas.
3. Establish minimum qualifications for swimming pool, spa, and waterslide operators and lifeguards.
4. Establish and collect fees to defray the cost of administering this chapter. However, the portion of fees needed to defray the costs of a local board of health in implementing this chapter shall be established by the local board of health.
5. Adopt rules in accordance with chapter 17A for the implementation and enforcement of this chapter, and the establishment of fees. The department shall appoint an advisory committee composed of owners, operators, local officials, and representatives of the public to advise it in the formulation of appropriate rules.
6. Enter into agreements with a local board of health or local boards of health in a contiguous area to implement the inspection and enforcement provisions of this chapter. The agreements shall provide that the fees established by the local board or boards of health for inspection and enforcement shall be retained by the local board or boards. A local board of health or boards of health in a contiguous area may enter into such an agreement with the department. However, inspection fees shall not be charged by the department for facilities which are inspected by third-party authorities. Third-party authorities shall be approved by the department. The department shall monitor and certify the inspection and enforcement programs of local boards of health and approved third-party authorities.

89 Acts, ch 291, §4 HF 373  
NEW section

### **135I.5 Penalty.**

A person who violates a provision of this chapter commits a simple misdemeanor. Each day upon which a violation occurs constitutes a separate violation.

89 Acts, ch 291, §5 HF 373  
NEW section

### **135I.6 Enforcement.**

If the department or a local board or boards of health acting pursuant to agreement with the department determines that a provision of this chapter or a rule adopted pursuant to this chapter has been or is being violated, the department or the local board or boards of health may order that a facility or item of equipment not be used until the necessary corrective action has been taken.

The department or the local board of health may request the county attorney to bring appropriate legal proceedings to enforce this chapter, including an action to enjoin violations. The attorney general may also institute appropriate legal proceedings at the request of the department. This remedy is in addition to any other legal remedy available to the department or a local board or boards of health.

89 Acts, ch 291, §6 HF 373  
NEW section

## CHAPTER 136

### STATE BOARD OF HEALTH

#### 136.2 Appointment.

All members of the state board of health shall be appointed by the governor to three-year staggered terms which shall expire on June 30.

The governor shall appoint annually successors to the three board members whose terms expire that year. A vacancy occurring on the board shall be filled by the governor for the unexpired term of the vacancy.

89 Acts, ch 83, §27 SF 112  
Section amended

## CHAPTER 136B

### RADON TESTING

#### 136B.1 Radon testing and abatement program.

1. As used in this chapter, unless the context otherwise requires, "department" means the Iowa department of public health.

2. The department shall establish programs and adopt rules for the certification of persons who test for the presence of radon gas and radon progeny in buildings and for the credentialing of persons abating the level of radon in buildings.

3. Following the establishment of the certification and credentialing programs by the department, a person who is not certified, as appropriate, shall not test for the presence of radon gas and radon progeny, and a person who is not credentialed, as required, shall not perform abatement measures. This section does not apply to a person performing the testing or abatement on a building which the person owns, or to a person performing testing or abatement without compensation.

4. For the purposes of this section, radon abatement systems shall be classified as mechanical ventilation systems.

89 Acts, ch 224, §1 SF 522  
Section amended

#### 136B.2 Radon testing information—disclosure.

1. A person shall not disclose to any other person, except to the department, the address or owner of a nonpublic building that the person tested for the presence of radon gas and radon progeny, unless the owner of the building waives, in writing, this right of confidentiality. Any test results disclosed shall be results of a test performed within the five years prior to the date of the disclosure.

Notwithstanding the requirements of this section, disclosure to any person of the results of a test performed on a nonpublic building for the presence of radon gas and radon progeny is not required if the results do not exceed the currently established United States environmental protection agency action guidelines.

A person who tests a nonpublic building which the person owns is not required to disclose to any person the results of a test for the presence of radon gas or progeny if the test is performed by the person who owns the nonpublic building.

2. A person certified or credentialed pursuant to section 136B.1 shall, within thirty days of the provision of any radon testing services or abatement measures or at the request of the department prior to testing or abatement, disclose to the department the address or location of the building, the name of the owner of the building where the services or measures were or will be provided, and the results of any tests or abatement measures performed.

89 Acts, ch 224, §2 SF 522  
Subsection 2 amended

### **136B.3 Testing and reporting of radon level.**

The department shall from time to time perform inspections and testing of the premises of a property to determine the level at which it is contaminated with radon gas or radon progeny as a spot-check of the validity of measurements or the adequacy of abatement measures performed by persons certified or credentialed under section 136B.1. Following testing the department shall provide the owner of the property with a written report of its results including the concentration of radon gas or radon progeny contamination present, an interpretation of the results, and recommendation of appropriate action. A person certified or credentialed under section 136B.1 shall also be advised of the department's results, discrepancies revealed by the spot-check, actions required of the person, and actions the department intends to take with respect to the person's continued certification or credentialing.

89 Acts, ch 224, §3 SF 522  
Section amended

### **136B.4 Fees—rules.**

The department shall establish a fee schedule to defray the costs of the certification and credentialing programs established pursuant to section 136B.1 and the testing conducted and the written reports provided pursuant to section 136B.3.

The department shall adopt rules, pursuant to chapter 17A, to implement this chapter.

89 Acts, ch 224, §4 SF 522  
Unnumbered paragraph 1 amended

## **CHAPTER 137**

### **LOCAL BOARDS OF HEALTH**

#### **137.16 Appointment of city health officer.**

A city which is part of a county or district health department may appoint or designate a city health officer for the city. The city health officer shall enforce the rules and regulations of the county or district health board within the city.

89 Acts, ch 141, §1 HF 430  
NEW section

## **CHAPTER 139A**

### **EXPOSURE TO CHEMICALS—VETERANS**

**139A.10** Reserved.

#### **139A.11 Veterans' litigation awards.**

1. For purposes of this section, "*Vietnam herbicide*" means a herbicide, defoliant, or other causative agent containing dioxin, including, but not limited

to, Agent Orange, used in the Vietnam conflict at any time between December 22, 1961, and May 7, 1975, inclusive.

2. *a.* Notwithstanding any other law of this state, proceeds received pursuant to a judgment in, or settlement of, a lawsuit against the manufacturer or distributor of a Vietnam herbicide for damages resulting from exposure to the herbicide shall not be considered as income or an asset for determining the eligibility for state or local government benefit or entitlement programs. The proceeds are not subject to recoupment for the receipt of governmental benefits or entitlements and liens, except liens for child support, are not enforceable against these sums for any reason.

*b.* This exclusion of litigation proceeds from benefit or entitlement program calculations are available only to disabled veterans or their beneficiaries, whether payment is received in a lump sum or payable in installments over a period of years.

89 Acts, ch 249, §1 HF 578  
NEW section

## CHAPTER 141

### ACQUIRED IMMUNE DEFICIENCY SYNDROME

#### SUBCHAPTER I

##### PREVENTION AND INTERVENTION PLAN

#### **141.6 Partner notification program—human immunodeficiency virus (HIV)—crime.**

1. The Iowa department of public health shall implement, as a part of the comprehensive AIDS prevention and intervention plan, a partner notification program for persons known to have tested positive for the human immunodeficiency virus infection, beginning September 1, 1988.

2. The Iowa department of public health shall initiate the program at alternative testing and counseling sites and at sexually transmitted disease clinics.

3. In administering the program, the Iowa department of public health shall provide for the following:

*a.* A person who tests positive for the human immunodeficiency virus infection shall receive posttest counseling, during which time the person shall be encouraged on a strictly confidential basis to refer for counseling and human immunodeficiency virus testing any person with whom the person has had sexual relations or has shared intravenous equipment.

*b.* If, following counseling, a person who tests positive for the human immunodeficiency virus infection chooses to disclose the identity of any sexual partners or persons with whom the person has shared intravenous equipment, the physician or health practitioner attending the person shall obtain written consent which acknowledges that the person is making the disclosure voluntarily.

*c.* The physician or health practitioner attending the person shall forward any written consent forms to the Iowa department of public health.

*d.* Devise a procedure, as a part of the partner notification program, to provide for the notification of an identifiable third party who is a sexual partner of or who shares intravenous equipment with a person who has tested positive for the human immunodeficiency virus, by the department or a physician, when all of the following situations exist:

(1) A physician for the infected person is of the good faith opinion that the nature of the continuing contact poses an imminent danger of human immunodeficiency virus infection transmission to the third party.

(2) When the physician believes in good faith that the infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program.

Notwithstanding subsection 4, the department or a physician may reveal the identity of a person who has tested positive for the human immunodeficiency virus infection pursuant to this subsection only to the extent necessary to protect a third party from the direct threat of transmission. Notification of a person pursuant to this paragraph is subject to the disclosure provisions of section 141.23, subsection 3. This subsection shall not be interpreted to create a duty to warn third parties of the danger of exposure to human immunodeficiency virus through contact with a person who tests positive for the human immunodeficiency virus infection.

Prior to notification of a third party, the physician proposing to cause the notification to be made shall make reasonable efforts to inform, in writing, the person who has tested positive for the human immunodeficiency virus infection. The written information shall state that due to the nature of the person's continuing contact with a third party, the physician is forced to take action to provide notification to the third party. The physician, when reasonably possible, shall provide the following information to the person who has tested positive for the human immunodeficiency virus infection:

- (a) The nature of the disclosure and the reason for the disclosure.
- (b) The anticipated date of disclosure.
- (c) The name of the party or parties to whom disclosure is to be made.

The department shall adopt rules pursuant to chapter 17A to implement this paragraph. The rules shall provide a detailed procedure by which the department or a physician may directly notify an endangered third party.

4. In making contact the Iowa department of public health shall not disclose the identity of the person who provided the names of the persons to be contacted and shall protect the confidentiality of persons contacted.

5. The Iowa department of public health may delegate its partner notification duties under this section to local health authorities unless the local authority refuses or neglects to conduct the contact tracing program in a manner deemed to be effective by the Iowa department of public health.

6. A person who violates a confidentiality requirement of subsection 1, 2, 3, 4, or 5 is guilty of a class "D" felony.

89 Acts, ch 223, §1 HF 641  
Subsection 3, NEW paragraph d

#### **141.10 Confidential reports and immunities.**

1. Reports, information, and records submitted and maintained pursuant to this subchapter are strictly confidential medical information. The information shall not be released, shared with an agency or institution, or made public upon subpoena, search warrant, discovery proceedings, or by any other means except under any of the following circumstances:

- a. Release may be made of medical or epidemiological information for statistical purposes in a manner such that no individual person can be identified.
- b. Release may be made of medical or epidemiological information to the extent necessary to enforce the provisions of this subchapter and related rules concerning the treatment, control, and investigation of human immunodeficiency virus infection by public health officials.
- c. Release may be made of medical or epidemiological information to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named party.

d. Release may be made of test results concerning a patient pursuant to procedures established under section 141.6, subsection 3, paragraph "d".

2. An officer or employee of the state or local department of health or a person making a report pursuant to this subchapter shall not be examined in any judicial, executive, legislative, or other proceeding as to the existence or content of an individual report made pursuant to this subchapter.

3. Reports, information, and records which contain the identity of persons except reports, information, and records necessary to honor the requests made pursuant to section 141.8 shall be destroyed immediately after the extraction of statistical data and completion of contact identification or in no event longer than six months from the date the report, information, or record was received.

4. A person making a report in good faith pursuant to this subchapter is immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of the report.

5. For purposes of this section, "good faith" means objectively reasonable, and not in violation of clearly established statutory rights or other rights of a person which a reasonable person would know or should have known.

6. A physician or health care practitioner attending a person who tests positive for the human immunodeficiency virus infection has no duty to disclose to or warn third parties of the dangers of exposure to human immunodeficiency virus infection through contact with that person and is immune from any liability, civil or criminal, for failure to disclose to or warn third parties of the condition of that person.

89 Acts, ch 223, §2, 3 HF 641  
 Subsection 1, NEW paragraph d  
 NEW subsection 6

#### SUBCHAPTER II

#### TESTING

#### 141.22 Testing—application for services—pamphlets.

1. Prior to withdrawing blood for the purpose of performing an HIV-related test, the subject of the test or the subject's legal guardian, except when the provisions of subsection 6 apply, shall be provided with preliminary counseling which shall include but is not limited to the following:

a. An explanation of the test, including the test's purposes, potential uses, limitations, and the meaning of both positive and negative results.

b. An explanation of the nature of AIDS and ARC, including the relationship between the test results and the diseases.

c. An explanation of the procedures to be followed, including the fact that the test is entirely voluntary and can be performed anonymously if requested.

d. Information concerning behavioral patterns known to expose a person to the possibility of contracting AIDS and methods for minimizing the risk of exposure.

2. A person seeking an HIV-related test shall have the right to remain anonymous. A health care provider shall provide for the anonymous administration of the test at the subject's request or shall confidentially refer the subject to a site which provides anonymous testing.

3. At any time that a subject is informed of test results, counseling concerning the emotional and physical health effects shall be initiated. Particular attention shall be given to explaining the need for the precautions necessary to avoid transmitting the virus. The subject shall be given information concerning additional counseling. Any additional testing that is advisable shall be explained to the subject and arrangements for the testing shall be made.

4. Prior to withdrawing blood for the purpose of performing an HIV-related test, the subject shall be given written notice of the provisions of this section and of section 141.6, subsection 3, paragraph "d".

5. Notwithstanding subsections 1 through 4, the provisions of this section do not apply to any of the following:

a. The performance by a health care provider or health facility of an HIV-related test when the health care provider or health facility procures, processes, distributes, or uses a human body part donated for a purpose specified under the Uniform Anatomical Gift Act, or semen provided prior to July 1, 1988, for the purpose of artificial insemination, or donations of blood, and such test is necessary to assure medical acceptability of such gift or semen for the purposes intended.

b. The performance of an HIV-related test by licensed medical personnel in medical emergencies when the subject of the test is unable to grant or withhold consent, and the test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment, except that posttest counseling shall be required.

c. A person engaged in the business of insurance who is subject to section 505.16.

6. A person may apply for voluntary treatment, contraceptive services, or screening or treatment for AIDS and other sexually transmitted diseases, directly to a licensed physician and surgeon, an osteopathic physician and surgeon, or a family planning clinic. Notwithstanding any other provision of law, if the person seeking the treatment is a minor who has personally made application for services, screening, or treatment, the fact that the minor sought services or is receiving services, screening, or treatment shall not be reported or disclosed, except for statistical purposes. Notwithstanding any other provision of law, however, the minor shall be informed prior to testing that upon confirmation according to prevailing medical technology of a positive HIV-related test result the minor's legal guardian is required to be informed by the testing facility. Testing facilities where minors are tested shall have available a program to assist minors and legal guardians with the notification process which emphasizes the need for family support and assists in making available the resources necessary to accomplish that goal. However, a testing facility which is precluded by federal statute, regulation, or center for disease control guidelines, from informing the legal guardian is exempt from the notification requirement, but not from the requirement for an assistance program. The minor shall give written consent to these procedures and to receive the services, screening, or treatment. Such consent is not subject to later disaffirmance by reason of minority.

7. When submitted the department shall review and approve pamphlets containing the information required to be provided to a subject or the subject's legal guardian pursuant to subsection 1. The department shall also prepare a model pamphlet containing this information. This subsection does not require submission of all pamphlets containing the required information to the department for approval.

89 Acts, ch 223, §4, 5 HF 641; 89 Acts, ch 296, §16 SF 141  
 Subsection 4 amended  
 Subsection 6 amended  
 NEW subsection 7

#### **141.22A Emergency responder testing program.**

If a person in the course of responding to an emergency renders aid to an injured person and becomes exposed to bodily fluids of the injured person, that emergency responder shall be entitled to HIV testing in accordance with the latest available medical technology to determine if infection with the human immunodeficiency virus has occurred. The costs of the test shall be paid for through the expenditure of funds appropriated to the department for AIDS-related activities.

89 Acts, ch 223, §6 HF 641  
 NEW section

#### **141.23A Human immunodeficiency virus epidemiological blinded study.**

Notwithstanding section 141.8 regarding informed consent and reporting requirements, and section 141.22 regarding informed consent and preliminary and

posttest counseling, the Iowa department of public health or its agent may conduct through the expenditure of federal grant moneys allocated for this purpose an epidemiological blinded study of newborns to determine the prevalence of the human immunodeficiency virus infection. All personal identifiers shall be permanently stripped from the specimens selected prior to testing for the human immunodeficiency virus infection.

For the purposes of this section, "*epidemiological blinded study*" means a study in which blood specimens which were collected for other purposes are selected according to established criteria, are permanently stripped of personal identifiers, and are then tested.

89 Acts, ch 69, §1 SF 410  
NEW section

#### 141.24 Remedies.

1. A person aggrieved by a violation of this subchapter shall have a right of action for damages in district court.
2. An action under this subchapter is barred unless the action is commenced within two years after the cause of action accrues.
3. The attorney general may maintain a civil action to enforce this subchapter.
4. This subchapter does not limit the rights of the subject of an HIV-related test to recover damages or other relief under any other applicable law.
5. This subchapter shall not be construed to impose civil liability or criminal sanction for disclosure of HIV-related test results in accordance with any reporting requirement for a diagnosed case of AIDS or a related condition by the department or the centers for disease control of the United States public health service.

89 Acts, ch 223, §7 HF 641  
Former subsection 1 stricken and subsections 2-6 renumbered as 1-5

## CHAPTER 145

### HEALTH DATA COMMISSION

Annual publications and health care utilization study required; 89 Acts, ch 304, §1002 SF 538

#### 145.3 Powers and duties.

1. The health data commission shall enter into an agreement with the health policy corporation of Iowa or any other corporation, association, or entity it deems appropriate to provide staff for the commission, to provide staff for the compilation, correlation, and development of the data collected by the commission, to conduct or contract for studies on health-related questions which will further the purpose and intent expressed in section 145.1. The agreement may provide for the corporation, association, or entity to prepare and distribute or make available data to health care providers, health care subscribers, third-party payers, and the general public.

2. a. The commission may require that the state departments of public health and human services, and the insurance division of the department of commerce obtain for and make available to the commission data needed to carry out its purpose including but not limited to the data specified in this section. This data may be acquired from health care providers, third-party payers, the state medicaid program, and other appropriate sources.

b. The data collected by and furnished to the commission pursuant to this section shall not be public records under chapter 22. The compilations prepared for release or dissemination from the data collected shall be public records under chapter 22, which are not subject to section 22.7, subsection 2, to the extent

provided in section 145.4. The confidentiality of patients is to be protected and the laws of this state in regard to patient confidentiality apply, except to the extent provided in section 145.4.

3. The commission shall require that:

a. The commissioner of insurance and the director of public health encourage and assist third-party payers and hospitals to voluntarily implement the use of a uniform hospital billing form, and require that all third-party payers and all hospitals use, by July 1, 1984, the uniform hospital billing form designated or established by the commission. Uniform definitions for the billing form shall be established by the commission.

b. The commissioner of insurance require that all third-party payers, including but not limited to licensed insurers, medical and hospital service corporations, health maintenance organizations, and self-funded employee health plans, provide hospital inpatient and outpatient claims data and corresponding physician claims data to the commission pursuant to section 505.8. This data shall include the patient's age, sex, zip code, third-party coverage, date of admission, procedure and discharge date, principal and other diagnoses, principal and other procedures, total charges and components of those charges, attending physician identification number and hospital identification number. Prior to July 1, 1984, the commissioner of insurance may limit the data collection to major third-party payers and a sample of those third-party payers with low market penetration; to more frequent diagnoses and procedures; and to hospital inpatient claims.

c. The corporation, association, or other entity providing research for the commission shall compile and disseminate comparative information on average charges, total and ancillary charge components, and length of stay on diagnosis-specific and procedure-specific cases on a hospital basis from the data defined in paragraph "b". The data as collected by the commission shall not be public records under chapter 22. The compilations prepared for release or dissemination from the data collected shall be public records under chapter 22, which are not subject to section 22.7, subsection 2, to the extent provided in section 145.4. Prior to the release or dissemination of the compilations, the commission or the corporation, association, or other entity under agreement with the commission pursuant to section 145.3, subsection 1, shall permit providers an opportunity to verify the accuracy of any information pertaining to the provider. The providers may submit to the commission any corrections of errors in the compilations of the data with any supporting evidence and comments the provider may submit. The commission shall correct data found to be in error.

d. If the data required by the commission or the members of the commission is available on computer or electronic tape, that a copy of this tape shall be provided when requested.

e. The director of public health and the commissioner of insurance establish a system which creates the use of a common identification number between the uniform hospital billing form and the hospital discharge abstract.

f. The director of public health establish a system of uniform physician identification numbers for use on the hospital discharge abstract forms.

g. The director of human services make available to the commission data and information on the medicaid program similar to that required of other third-party payers.

h. The commissioner of insurance and the director of public health require the collection of physicians and registered nurses billing information from third-party payers and self-insurers as specified by the health data commission. This billing information shall be collected for physicians as defined by section 135.1 and for registered nurses licensed under chapter 152. The collection, correlation, and development of this data shall include, but not be limited to, information and

reports covering the physician designations as defined in section 135.1 and registered nurses licensed under chapter 152 and shall be made available annually.

*i.* The commissioner of insurance and the director of public health encourage health care providers, as defined in section 514.1, except licensed physicians and chiropractors, and third-party payers to use a common reporting form.

*j.* The commissioner of insurance and the director of public health shall require a pilot project which will collect billing information on surgical procedures commonly performed by health care providers licensed under chapters 148, 149, 150 and 150A, as specified by the health data commission. The pilot project shall be completed by July 1, 1988.

4. The commission may require that:

*a.* The director of public health require that the uniform discharge abstract form designated or established by the commission be used by all hospitals by July 1, 1984.

*b.* The commissioner of insurance require corporations regulated by the commissioner who provide health care insurance or service plans to provide health care policyholder or subscriber data by geographic area or other demographics.

*c.* The director of public health require hospitals to submit annually to the director and to post notification in a public area that there is available for public examination in each facility the established charges for services, where applicable including but not limited to, routine daily room service, special care daily room service, delivery room service, operating room service, emergency room service and anesthesiology services, and as enumerated by the commission, for each of the twenty-five most common laboratory services, radiology services, and pharmacy prescriptions. In addition to the posting of the notification, the hospital shall post in each facility next to the notification, the established charges for routine daily room service, special care daily room service, delivery room service, operating room service, and emergency room service.

*d.* Additional or alternative information related to the intent and purpose of this chapter as outlined in section 145.1 be submitted to the commission, except that in no event shall hospitals with fewer than one hundred licensed acute care beds be required to install computerized severity of illness systems before July 1, 1991.

*e.* The health policy corporation of Iowa or any other corporation, association, or entity or state agency deemed appropriate begin exploring the feasibility of collecting data for long-term health care and home health care relating to cost and utilization information.

*f.* The director of human services, the director of public health, and the director of the department of elder affairs collect and analyze long-term care data.

5. The health data commission shall not contract with a corporation, association, or other entity that engages in whole or in part in the provision of health care services or a corporation, association, or entity that has a material or financial interest in the provision of health care services.

89 Acts, ch 164, §1 HF 729; 89 Acts, ch 23, §1, 2 SF 96  
 Subsection 3, paragraph h amended  
 Subsection 4, paragraph d amended  
 NEW subsection 5

### **145.6 Reports.**

The commission shall submit an annual report on the actions taken by the commission to the legislature not later than January 15 of each year.

89 Acts, ch 23, §3 SF 96  
 Section amended

## 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, physician assistant, 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, practice as a physician assistant, 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. *"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, pursuant to rules established by the department, and who is currently certified as a first responder by the department.
9. *"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.
10. *"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.

89 Acts, ch 89, §4, 5 HF 371

Former subsection 8 stricken, former subsections 9-11 renumbered as 8-10, and subsection 8 amended

**147.32 Accredited colleges.** Repealed by 89 Acts, ch 3, §3. SF 89

**147.76 Rules adopted.**

The examining boards for the various professions shall adopt all necessary and proper rules to implement and interpret this chapter and chapters 147A through 158, except chapters 148D and 153A.

89 Acts, ch 83, §28 SF 112

Section amended

**147.80 License—examination—fees.**

An examining board shall set the fees for the examination of applicants, which fees shall be based upon the annual cost of administering the examinations. An examining board shall set the annual fees, except renewal fees which need not be annual, required for any of the following based upon the cost of sustaining the board and the actual costs of licensing:

1. License to practice dentistry issued upon the basis of an examination given by the board of dental examiners, license to practice dentistry issued under a reciprocal agreement, resident dentist's license, renewal of a license to practice dentistry.
2. License to practice pharmacy issued upon the basis of an examination given by the board of pharmacy examiners, license to practice pharmacy issued under a reciprocal agreement, renewal of a license to practice pharmacy.
3. License to practice medicine and surgery or osteopathic medicine and surgery issued upon the basis of an examination given by the board of medical examiners, license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy issued by endorsement or under a reciprocal agreement, renewal of a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy.
4. Certificate to practice psychology or associate psychology issued on the basis of an examination given by the board of psychology examiners, or certificate to practice psychology or associate psychology issued under a reciprocity agreement or by endorsement, renewal of a certificate to practice psychology or associate psychology.
5. Application for a license to practice as a physician assistant, issuance of a license to practice as a physician assistant issued upon the basis of an examination given or approved by the board of physician assistant examiners, issuance of a license to practice as a physician assistant issued under a reciprocal agreement, renewal of a license to practice as a physician assistant, temporary license to practice as a physician assistant, registration of a physician assistant, temporary registration of a physician assistant, renewal of a registration of a physician assistant.
6. License to practice chiropractic issued on the basis of an examination given by the board of chiropractic examiners. License to practice chiropractic issued by endorsement or under a reciprocal agreement, renewal of a license to practice chiropractic.
7. License to practice podiatry issued upon the basis of an examination given by the board of podiatry examiners, license to practice podiatry issued under a reciprocal agreement, renewal of a license to practice podiatry.
8. License to practice physical therapy issued upon the basis of an examination given by the board of physical and occupational therapy examiners, license to

practice physical therapy issued under a reciprocal agreement, renewal of a license to practice physical therapy.

9. For a license to practice optometry issued upon the basis of an examination given by the board of optometry examiners, license to practice optometry issued under a reciprocal agreement, renewal of a license to practice optometry.

10. License to practice dental hygiene issued upon the basis of an examination given by the board of dental examiners, license to practice dental hygiene issued under a reciprocal agreement, renewal of a license to practice dental hygiene.

11. License to practice mortuary science issued upon the basis of an examination given by the board of mortuary science examiners, license to practice mortuary science issued under a reciprocal agreement, renewal of a license to practice mortuary science.

12. License to practice nursing issued upon the basis of an examination given by the board of nurse examiners, license to practice nursing based on an endorsement from another state, territory or foreign country, renewal of a license to practice nursing.

13. A nurse who does not engage in nursing during the year succeeding the expiration of the license shall notify the board to place the nurse upon the inactive list and the nurse shall not be required to pay the renewal fee so long as the nurse remains inactive and so notifies the board. To resume nursing, the nurse shall notify the board and remit the renewal fee for the current period.

14. License to practice cosmetology issued upon the basis of an examination given by the board of cosmetology examiners, license to practice cosmetology under a reciprocal agreement, renewal of a license to practice cosmetology, temporary permit to practice as a cosmetology trainee, original license to conduct a school of cosmetology, renewal of license to conduct a school of cosmetology, original license to operate a beauty salon, renewal of a license to operate a beauty salon, original license and examination to practice electrolysis, renewal of a license to practice electrolysis, original license to practice manicuring, renewal of a license to practice manicuring, annual inspection of a school of cosmetology, annual inspection of a beauty salon, original cosmetology school instructor's license, renewal of cosmetology school instructor's license.

15. License to practice barbering on the basis of an examination given by the board of barber examiners, license to practice barbering under a reciprocal agreement, renewal of a license to practice barbering, annual inspection by the department of inspections and appeals of barber school and annual inspection of barber shop, an original barber school license, renewal of a barber school license, transfer of license upon change of ownership of a barber shop or barber school, inspection by the department of inspections and appeals and an original barber shop license, renewal of a barber shop license, original barber school instructor's license, renewal of a barber school instructor's license, original barber assistant's license, renewal of a barber assistant's license.

16. License to practice speech pathology or audiology issued on the basis of an examination given by the board of speech pathology and audiology, or license to practice speech pathology or audiology issued under a reciprocity agreement, renewal of a license to practice speech pathology or audiology.

17. License to practice occupational therapy issued upon the basis of an examination given by the board of physical and occupational therapy examiners, license to practice occupational therapy issued under a reciprocal agreement, renewal of a license to practice occupational therapy.

18. License to assist in the practice of occupational therapy issued upon the basis of an examination given by the board of physical and occupational therapy examiners, license to assist in the practice of occupational therapy issued under a reciprocal agreement, renewal of a license to assist in the practice of occupational therapy.

19. License to practice social work issued on the basis of an examination by the board of social work examiners, or license to practice social work issued under a reciprocity agreement, or renewal of a license to practice social work.

20. License to practice dietetics issued upon the basis of an examination given by the board of dietetic examiners, license to practice dietetics issued under a reciprocal agreement, or renewal of a license to practice dietetics.

21. For a certified statement that a licensee is licensed in this state.

22. Duplicate license, which shall be so designated on its face, upon satisfactory proof the original license issued by the department has been destroyed or lost.

The licensing and certification division shall prepare estimates of projected revenues to be generated by the licensing, certification, and examination fees of each board as well as a projection of the fairly apportioned administrative costs and rental expenses attributable to each board. Each board shall annually review and adjust its schedule of fees so that, as nearly as possible, projected revenues equal projected costs and any imbalance in revenues and costs in a fiscal year is offset in a subsequent fiscal year.

89 Acts, ch 240, §1 SF 14  
Subsection 14 amended

#### 147.99 Duties of secretary.

The secretary of the board of pharmacy examiners shall, upon the direction of the board, make inspections of alleged violations of the provisions of this title relative to the practice of pharmacy and of chapters 203B, 204, and 205. The secretary shall be allowed necessary traveling and hotel expenses in making such inspections.

89 Acts, ch 197, §22 HF 343  
Section amended

## CHAPTER 147A

### ADVANCED EMERGENCY MEDICAL CARE—PARAMEDICS

#### 147A.1 Definitions.

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

1. *"Advanced emergency medical care"* means such medical procedures as:
  - a. Administration of intravenous solutions.
  - b. Intubation.
  - c. Performance of cardiac defibrillation and synchronized cardioversion.
  - d. Administration of emergency drugs as provided by rule by the board.
  - e. Any other medical procedure approved by the board, by rule, as appropriate to be performed by advanced emergency medical care providers who have been trained in that procedure.
2. *"Advanced emergency medical care provider"* means an individual trained to provide advanced emergency medical care at the first-responder-defibrillation, EMT-defibrillation, EMT-intermediate, EMT-paramedic level or other certification levels adopted by rule by the board, who has been issued a certificate by the board.
3. *"Board"* means the board of medical examiners appointed pursuant to section 147.14, subsection 2.
4. *"Department"* means the Iowa department of public health.
5. *"Director"* means the director of the Iowa department of public health.
6. *"EMT"* is an abbreviation used in lieu of the term *"emergency medical technician"*.

7. "Physician" means an individual licensed under chapter 148, 150, or 150A.

89 Acts, ch 89, §6 HF 371  
Section amended

#### **147A.4 Rulemaking authority.**

1. The department shall adopt rules required or authorized by this chapter pertaining to the operation of ambulance, rescue, and first response services which have received authorization under section 147A.5 to utilize the services of certified advanced emergency medical care providers. These rules shall include, but need not be limited to, requirements concerning physician supervision, necessary equipment and staffing, and reporting by ambulance, rescue, and first response services which have received the authorization pursuant to section 147A.5.

2. The board shall adopt rules required or authorized by this chapter pertaining to the examination and certification of advanced emergency medical care providers. These rules shall include, but need not be limited to, requirements concerning prerequisites, training, and experience for advanced emergency medical care providers and procedures for determining when individuals have met these requirements.

The board shall establish the fee for the examination of the advanced emergency medical care providers to cover the administrative costs of the examination program.

89 Acts, ch 89, §7 HF 371  
Section amended

#### **147A.5 Applications for advanced emergency medical care services—approval—denial, probation, suspension, or revocation.**

1. An ambulance, rescue, or first response service in this state, that desires to provide advanced emergency medical care in the prehospital setting, shall apply to the department for authorization to establish a program utilizing certified advanced emergency medical care providers for delivery of the care at the scene of an emergency, during transportation to a hospital, or while in the hospital emergency department, and until care is directly assumed by a physician or by authorized hospital personnel.

2. The department shall approve an application submitted in accordance with subsection 1 when the department is satisfied that the program proposed by the application will be operated in compliance with this chapter and the rules adopted pursuant to this chapter.

3. The department may deny an application for authorization to establish a program utilizing the services of certified advanced emergency medical care providers, or may place on probation, suspend, or revoke existing authorization if the department finds reason to believe the program has not been or will not be operated in compliance with this chapter and the rules adopted pursuant to this chapter, or that there is insufficient assurance of adequate protection for the public. The denial or period of probation, suspension, or revocation shall be effected and may be appealed as provided by section 17A.12.

89 Acts, ch 89, §8 HF 371  
Subsections 1 and 3 amended

#### **147A.6 Advanced emergency medical care provider certificates—renewal.**

1. The board, upon application and receipt of the prescribed fee, shall issue a certificate attesting to the qualifications of an individual who has met all of the requirements for advanced emergency medical care provider certification established by the rules adopted under section 147A.4, subsection 2.

2. Advanced emergency medical care provider certificates are valid for the multiyear period determined by the board, unless sooner suspended or revoked.

The certificate shall be renewed upon application of the holder and receipt of the prescribed fee if the holder has satisfactorily completed continuing medical education programs as required by rule.

89 Acts, ch 89, §9 HF 371

Section amended and subsections rearranged to alphabetize

#### **147A.7 Denial, suspension or revocation of certificates—hearing—appeal.**

1. The board may deny an application for issuance or renewal of an advanced emergency medical care provider certificate, or suspend or revoke the certificate when it finds that the applicant or certificate holder is guilty of any of the following acts or offenses:

- a. Negligence in performing authorized services.
- b. Failure to follow the directions of the supervising physician.
- c. Rendering treatment not authorized under this chapter.
- d. Fraud in procuring certification.
- e. Professional incompetency.
- f. Knowingly making misleading, deceptive, untrue or fraudulent representation in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
- g. Habitual intoxication or addiction to the use of drugs.
- h. Fraud in representations as to skill or ability.
- i. Willful or repeated violations of this chapter or of rules adopted pursuant to this chapter.
- j. Violating a statute of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which relates to the practice of an advanced emergency medical care provider. A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.
- k. Having certification to practice as an advanced emergency medical care provider revoked or suspended, or having other disciplinary action taken by a licensing or certifying authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is conclusive or prima facie evidence.

2. A determination of mental incompetence by a court of competent jurisdiction automatically suspends a certificate for the duration of the certificate unless the board orders otherwise.

3. A denial, suspension or revocation under this section shall be effected, and may be appealed in accordance with the rules of the board established pursuant to chapter 258A.

89 Acts, ch 89, §10 HF 371

Subsection 1 amended

#### **147A.8 Authority of certified advanced emergency medical care provider.**

An advanced emergency medical care provider properly certified under this chapter may:

1. Render advanced emergency medical care, rescue, and lifesaving services in those areas for which the advanced emergency medical care provider is certified, as defined and approved in accordance with the rules of the board, at the scene of an emergency, during transportation to a hospital or while in the hospital emergency department, and until care is directly assumed by a physician or by authorized hospital personnel.
2. Function in any hospital when:
  - a. Enrolled as a student or participating as a preceptor in a training program approved by the board; or

b. Fulfilling continuing education requirements as defined by rule; or

c. Employed by or assigned to a hospital as a member of an authorized ambulance, rescue, or first response service, by rendering lifesaving services in the facility in which employed or assigned pursuant to the advanced emergency medical care provider's certification and under the direct supervision of a physician or registered nurse. An advanced emergency medical care provider shall not routinely function without the direct supervision of a physician or registered nurse. However, when the physician or registered nurse cannot directly assume emergency care of the patient, the advanced emergency medical care provider may perform without direct supervision advanced emergency medical care procedures for which that individual is certified if the life of the patient is in immediate danger and such care is required to preserve the patient's life; or

d. Employed by or assigned to a hospital as a member of an authorized ambulance, rescue, or first response service to perform nonlifesaving procedures for which those individuals have been trained and are designated in a written job description. Such procedures may be performed after the patient is observed by and when the advanced emergency medical care provider is under the supervision of the physician or registered nurse and where the procedure may be immediately abandoned without risk to the patient.

89 Acts, ch 89, §11 HF 371  
Section amended

#### **147A.9 Remote supervision of advanced emergency medical care providers—emergency communication failure—authorization of immediate lifesaving procedures.**

1. When voice contact or a telemetered electrocardiogram is monitored by a physician or physician's designee, and direct communication is maintained, an advanced emergency medical care provider may upon order of the monitoring physician or upon standing orders of a physician transmitted by the monitoring physician's designee perform any advanced emergency medical care procedure for which that advanced emergency medical care provider is certified.

2. If communications fail during an emergency situation, the advanced emergency medical care provider may perform any advanced emergency medical care procedure for which that individual is certified and which is included in written protocols if in the judgment of the advanced emergency medical care provider the life of the patient is in immediate danger and such care is required to preserve the patient's life.

3. The board shall adopt rules to authorize the institution of lifesaving procedures in accordance with written protocols in instances where the establishment of communication in lieu of immediate action may cause patient harm or death.

89 Acts, ch 89, §12 HF 371  
Section amended

#### **147A.10 Exemptions from liability in certain circumstances.**

1. A physician or physician's designee who gives orders, either directly or via communications equipment from some other point, to an appropriately certified advanced emergency medical care provider at the scene of an emergency, and an appropriately certified advanced emergency medical care provider following the orders, are not subject to criminal liability by reason of having issued or executed the orders, and are not liable for civil damages for acts or omissions relating to the issuance or execution of the orders unless the acts or omissions constitute recklessness.

2. A physician, physician's designee, or advanced emergency medical care provider shall not be subject to civil liability solely by reason of failure to obtain consent before rendering emergency medical, surgical, hospital or health services to any individual, regardless of age, when the patient is unable to give consent for

any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care.

3. An act of commission or omission of any appropriately certified advanced emergency medical care provider while rendering advanced emergency medical care under the responsible supervision and control of a physician to a person who is deemed by them to be in immediate danger of serious injury or loss of life, shall not impose any liability upon the certified advanced emergency medical care provider, the supervising physician, or any hospital, or upon the state, or any county, city or other political subdivision, or the employees of any of these entities; provided that this section shall not relieve any person of liability for civil damages for any act of commission or omission which constitutes recklessness.

89 Acts, ch 89, §13 HF 371  
Section amended

#### **147A.11 Prohibited acts.**

1. Any person not certified as required by this chapter who claims to be an advanced emergency medical care provider, or who uses any other term to indicate or imply that the person is an advanced emergency medical care provider, or who acts as an advanced emergency medical care provider without having obtained the appropriate certificate under this chapter, is guilty of a class "D" felony.

2. An owner of an unauthorized ambulance, rescue, or first response service in this state who operates or purports to operate an authorized ambulance, rescue, or first response service, or who uses any term to indicate or imply such authorization without having obtained the appropriate authorization under this chapter, is guilty of a class "D" felony.

3. Any person who imparts or conveys, or causes to be imparted or conveyed, or attempts to impart or convey false information concerning the need for assistance of an ambulance, rescue, or first response service or of any personnel or equipment thereof, knowing such information to be false, is guilty of a serious misdemeanor.

89 Acts, ch 89, §14 HF 371  
Section amended

#### **147A.12 Registered nurse exception.**

1. This chapter does not restrict a registered nurse, licensed pursuant to chapter 152, from staffing an authorized ambulance, rescue, or first response service provided the registered nurse can document equivalency through education and additional skills training essential in the delivery of prehospital emergency care. The equivalency shall be accepted when:

a. Documentation has been reviewed and approved at the local level by the medical director of the ambulance, rescue, or first response service in accordance with the rules of the board of nursing developed jointly with the board of medical examiners.

b. Authorization has been granted to that ambulance, rescue, or first response service by the department.

2. Section 147A.10 applies to a registered nurse in compliance with this section.

89 Acts, ch 89, §15 HF 371  
Subsection 1 amended

## **CHAPTER 149**

### **PRACTICE OF PODIATRY**

#### **149.3 License.**

Every applicant for a license to practice podiatry shall:

1. Be a graduate of an accredited high school.

2. Present a diploma issued by a school of podiatry approved by the board of podiatry examiners.

3. Pass an examination in the subjects of anatomy, chemistry, dermatology, diagnosis, pharmacy and materia medica, pathology, physiology, histology, bacteriology, neurology, practical and clinical podiatry, foot orthopedics, and others, as prescribed by the board of podiatry examiners, and must obtain a general average of at least seventy-five percent and not less than seventy percent in any one subject.

4. Have successfully completed a one-year residency or preceptorship approved by the board of podiatry examiners. This subsection applies to all applicants who graduate from podiatric college on or after January 1, 1995.

89 Acts, ch 43, §1 HF 717  
NEW subsection 4

## CHAPTER 153

### PRACTICE OF DENTISTRY

#### 153.14 Persons not included.

Section 153.13 shall not be construed to include the following classes:

1. Students of dentistry who practice dentistry upon patients at clinics in connection with their regular course of instruction at the state dental college and students of dental hygiene who practice upon patients at clinics in connection with their regular course of instruction at state-approved schools.

2. Licensed "physicians and surgeons" or licensed "osteopaths and surgeons" who extract teeth or treat diseases of the oral cavity, gums, teeth, or maxillary bones as an incident to the general practice of their profession.

3. Persons licensed to practice dental hygiene who are exclusively engaged in the practice of said profession.

89 Acts, ch 63, §1 SF 90  
Subsection 1 amended

## CHAPTER 155A

### PHARMACY PRACTICE ACT

#### 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, 203B, 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.

89 Acts, ch 197, §23 HF 343  
Subsection 9 amended

## CHAPTER 157

### COSMETOLOGY

#### 157.2 Prohibition—exceptions.

It is unlawful for a person to practice cosmetology with or without compensation unless the person possesses a license issued under the provision of section 157.3. However practices listed in 157.1 when performed by the following persons are not defined as the practice of cosmetology:

1. Licensed physicians and surgeons, osteopaths, osteopathic physicians and surgeons, nurses, dentists, podiatrists, optometrists, chiropractors, and physical therapists, when exclusively engaged in the practice of their respective professions.

2. Licensed barbers who practice barbering as defined in section 158.1.

3. Students enrolled in licensed schools of cosmetology or barber schools who are practicing under the instruction or immediate supervision of an instructor.

4. Persons who perform without compensation any of the practices listed in section 157.1 on an emergency basis or on a casual basis.

5. Employees and residents of hospitals, health care facilities, orphans' homes, juvenile homes, and other similar facilities who shampoo, arrange, dress, or curl the hair of any resident without receiving direct compensation from the person receiving the service.

6. Persons who perform any of the practices listed in section 157.1 on themselves or on a member of the person's immediate family.

7. Persons licensed as manicurists pursuant to this chapter, when manicuring the nails of any person.

8. Employees of a licensed barbershop when manicuring fingernails, if permitted under section 158.14, subsection 2.

9. Persons licensed as electrologists pursuant to section 157.5, when practicing electrolysis as described in that section.

89 Acts, ch 240, §2 SF 14  
NEW subsections 7, 8 and 9

#### 157.5 License to practice electrolysis.

A person may obtain a license from the department for authority to remove superfluous hair by the use of the electric needle or electronic process by presenting to the board a diploma, or similar evidence, from a licensed school of cosmetology, or from any school in another state which is recognized by the board, which teaches the practice of the use of the electric needle or electronic process indicating that the applicant has successfully completed at least two hundred fifty hours of training relating to electrolysis. The board shall not require that a person

be licensed as a cosmetologist in order to obtain a license to practice electrolysis. The applicant shall pay a license fee as determined by the board under section 147.80.

The rules of the board shall include a provision whereby a license to practice electrolysis may be granted by reciprocity or endorsement to a person who is licensed in another state to practice electrolysis.

89 Acts, ch 240, §3 SF 14  
Section amended

#### **157.5A Manicurists.**

The department shall issue a license to practice manicuring to any person who submits proof of successful completion of a course of at least forty hours of training relating to manicuring in a licensed school of cosmetology or licensed barber school. The board shall adopt rules defining the course of study for a manicurist and the practices which a licensed manicurist may perform.

The applicant shall pay a license fee as determined by the board under section 147.80.

The rules of the board shall include a provision whereby a license to practice manicuring may be granted by reciprocity or endorsement to a person who is licensed in another state to practice manicuring.

89 Acts, ch 240, §4 SF 14  
NEW section

#### **157.14 Rules.**

The board shall adopt rules pursuant to chapter 17A to administer the provisions of this chapter.

89 Acts, ch 3, §1 SF 89  
Section amended

## **CHAPTER 158**

### **BARBERING**

#### **158.14 Manicurists.**

1. A licensed barbershop may employ a licensed manicurist to manicure the fingernails of any person.

2. An unlicensed person who was employed by a licensed barbershop to manicure fingernails prior to July 1, 1989, may continue such employment without meeting licensing requirements under chapter 157.

89 Acts, ch 240, §5 SF 14  
Section amended

#### **158.15 Rules.**

The board shall adopt rules pursuant to chapter 17A to administer the provisions of this chapter.

89 Acts, ch 3, §2 SF 89  
Section amended

## **CHAPTER 159**

### **DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP**

Advisory committee to research and make recommendations regarding grain marketing and a special quality grain program; legislative intent; 89 Acts, ch 195, §1, 3 HF 59

#### **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, constitute official agricultural statistics for the state of Iowa. The division is in the charge of an administrator, who shall be appointed by the secretary of agriculture and who shall be an officer of the United States department of agriculture statistical reporting service, if one is detailed for that purpose by the federal government.
8. Establish and maintain a marketing news service division in the department which shall, in 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. The division is in the charge of an administrator, who shall be appointed by the secretary of agriculture and shall be an officer of the federal market news and grading division of the United States department of agriculture, if one is detailed for that purpose by the federal government.
9. Inspect and supervise all 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 which shall promote the consumption of lamb, mutton, and the use of wool, aid in the orderly marketing of sheep and wool, and conduct other activities which are beneficial to the sheep industry in Iowa. The division is in the charge of an administrator, who shall be appointed by the secretary of agriculture. Funds

appropriated for the department of agriculture for state aid to the Iowa sheep association may be used together with other funds available for sheep promotion in establishing and maintaining the sheep promotion division, and the funds may be drawn and expended upon the order of the administrator with the approval of the secretary of agriculture.

13. Establish a swine tuberculosis eradication program including, but not limited to:

- a. The inspection of swine herds in this state when the department finds that an animal from a swine herd has, or is believed to have, tuberculosis;
- b. Ear tagging or otherwise physically marking all swine reacting positively to tests for tuberculosis;
- c. Condemning any swine which has tuberculosis;
- d. Depopulating any swine herd where tuberculosis is found to be generally present; and
- e. Compensate the owners of condemned swine as provided under section 165.18, following the general procedures for filing claims and paying indemnities as provided in chapter 165.

If the department finds that the source of the tuberculosis in a swine herd is from another species of animal, except bovine, located on or near the premises on which the affected swine herd is located, the department may destroy those animals and indemnify the owners of the condemned animals as provided in chapter 163.

14. Establish and maintain a division of soil conservation. The division administrator shall be appointed by the secretary from a list of names of persons recommended by the soil conservation committee, pursuant to section 467A.4, subsection 2, and shall serve at the pleasure of the secretary.

15. Establish an inspection and regulation program regarding water sold in sealed containers for human consumption. As used in this subsection, "water sold in sealed containers for human consumption" includes ice sold in sealed containers and bottled water; "bottled water" means drinking water which is placed in sealed containers for the purpose of sale to the public for human consumption; and "drinking water" means water sold for drinking, culinary, or other purposes involving the likelihood of the water being ingested for human consumption but does not include distilled water, carbonated beverages, mineral water, or other beverages which contain water. The program shall include, but is not limited to, all of the following:

- a. Establish, modify, or repeal rules relating to standards for testing for the presence of chemicals in water sold in sealed containers for human consumption. The standards for testing shall not be less stringent than the rules established for public drinking water supplies pursuant to chapter 455B.
- b. Establish, modify, or repeal rules relating to drinking water standards for water sold in sealed containers for human consumption. The standards shall establish the maximum permissible level of any physical, chemical, biological, or radiological substance in the water and shall be as stringent as those established under the federal Food and Drug Act.
- c. Establish, modify, or repeal rules relating to the labeling of water sold in sealed containers for human consumption including, but not limited to, requirements that water sold in this state shall have the words "Meets all F.D.A. standards" printed clearly and conspicuously on its label.
- d. Establish, modify, or repeal rules relating to the frequency with which facilities where water is placed in sealed containers, including but not limited to ice making and bottling facilities, are inspected and tested. The frequency standard shall not be less stringent than the frequency standard for testing of public water supplies under chapter 455B.

e. A requirement that all records pertaining to sampling and analysis of water sold in sealed containers for human consumption under this subsection shall be maintained at the bottling facility or if the water is bottled outside of the state at the distributor's facility. The records shall be maintained for at least two years and shall be available upon request for review by officials of the department.

f. Provide that enforcement of this subsection shall be pursuant to chapter 189.

g. The provisions of paragraphs "a", "b", "c", and "e" shall not apply to ice produced from a public water supply as defined and regulated in chapter 455B. Ice sold in sealed containers shall be labeled or tagged with the name and location of the ice maker and whether it is produced from a public water supply. The department shall adopt rules relating to the packaging and handling of ice sold in sealed containers.

89 Acts, ch 83, §29 SF 112; 89 Acts, ch 106, §1 SF 318  
Subsections 7, 8, 12 and 14 amended

### 159.6 Additional duties.

In addition to the duties imposed by section 159.5 the department shall enforce the law relative to:

1. Forest and fruit-tree reservations, chapter 161.
2. Infectious and contagious diseases among animals, chapter 163.
3. Eradication of bovine tuberculosis, chapter 165.
4. Hog-cholera virus and serum, chapter 166.
5. Use and disposal of dead animals, chapter 167.
6. Practice of veterinary medicine and surgery, chapter 169.
7. Cold storage, chapter 171.
8. Regulation and inspection of foods, drugs, and other articles, as provided in Title X, but chapters 202 and 203B through 205 of that title shall be enforced as provided in those chapters.
9. State aid received by certain associations as provided in chapters 176 to 184, and 186.
10. Coal mining and mines as set forth in chapters 83 and 83A.
11. Soil and water conservation as set forth in chapters 467A through 467F.
12. Grain dealers as set forth in chapter 542.
13. Grain bargaining agents as set forth in chapter 542A.
14. Bonded warehouses for agricultural products as set forth in chapter 543.
15. The grain depositors and sellers indemnity fund as set forth in chapter 543A.

89 Acts, ch 83, §30 SF 112; 89 Acts, ch 197, §24 HF 343  
See Code editor's note to §22.7  
Subsections 8 and 11 amended

### 159.8 Comprehensive management plan—highly erodible acres.

The department shall request cooperation from the federal government, including the agricultural conservation and stabilization service and the soil conservation service, to investigate methods to preserve land which is highly erodible, as provided in the federal Food Security Act of 1985, 16 U.S.C. §3801 et seq., for the purpose of developing with owners of the land a comprehensive management plan for the land. The plan may be based on the soil conservation plan of the federal soil conservation service and may include a farm unit conservation plan and a comprehensive agreement as provided in chapter 467A. The extension services at Iowa state university of science and technology shall cooperate with the department in developing the comprehensive plan.

The investigation shall include methods which help to preserve highly erodible land from row crop production through production of alternative commodities, and financial incentives. The department shall report to the governor and the general assembly not later than January 15, 1990, of the department's progress in the investigation. The department shall report to the governor and the general assembly

not later than January 15, 1991, on the department's recommendation for programs necessary to preserve highly erodible land from injury or destruction.

89 Acts, ch 188, §1 HF 623  
NEW section

**159.32 and 159.33** Reserved.

APPLE STANDARDS

**159.34 Standards for apples.**

1. The secretary may establish standards for apples. The standards shall conform to those established by regulations of the United States department of agriculture pursuant to the federal Agricultural Marketing Act of 1946, as codified in 7 U.S.C. §1621 et seq.

2. The secretary may establish independent standards, including grades or other classifications, of apples. The establishment of independent standards shall be based on a determination that the standards will benefit the apple industry. Independent standards shall be based on factors relating to the condition of the apples, which may relate to the following: maturity, form, ripeness, cleanliness, color, freshness, shape, size, smoothness, or soundness. The independent standards may be based on the following: the care of picking or packing; the level of decay, browning, or freezing; or damage caused by disease, pests, dirt, or other foreign matter, broken skin, bruises, sunburn, or sprayburn. The secretary, before establishing independent standards, shall consult with representatives of interested persons, including producers.

3. The secretary may inspect apples according to the standards, including grades, established pursuant to this section. The secretary may certify that inspected apples comply with the standards. The secretary may set fees necessary for inspection or certification.

4. A person who, for profit or pecuniary advantage, knowingly misrepresents that the apples have been inspected or certified according to the standards established pursuant to this section is guilty of a fraudulent practice as provided in chapter 714.

89 Acts, ch 208, §1 HF 331  
NEW section

**159.35 and 159.36** Reserved.

SPECIAL QUALITY GRAINS

**159.37 Special quality grains electronic bulletin board.**

1. The department shall establish within the international trade bureau of the marketing division a special quality grains electronic bulletin board system. The system shall be available to any and all buyers and sellers of special quality grains for the purpose of posting the availability of special quality grains, or a demand for special quality grains.

2. The department shall actively promote the use of this system by both of the following:

a. Sellers who are producers or elevators.

b. Buyers who are government buying agencies, elevators, commercial firms, or others.

3. The system shall be limited to an informational service to permit one party of a potential transaction to learn basic preliminary information needed to locate and contact a second party if there is a commonality of demand and supply. The system shall not be operated as a trading system for completion of a contract, without express legislative permission. The department or the state shall not be liable for any action in connection with facilitating the initial contact between the

parties through the electronic bulletin board system. The department or the state makes no warranties with regard to the information supplied to the bulletin board or to system participants.

89 Acts, ch 195, §2 HF 59  
 Advisory committee to study special quality grain program may consider expanding electronic bulletin board; legislative intent; 89 Acts, ch 195, §1, 3 HF 59  
 NEW section

## CHAPTER 162

### CARE OF ANIMALS IN COMMERCIAL ESTABLISHMENTS

#### 162.3 Certificate of registration for pound.

A pound shall not be operated unless a certificate of registration for the pound is granted by the secretary. Application for the certificate shall be made in the manner approved by the secretary. Certificates of registration expire one year from date of issue unless revoked and may be renewed upon application in the manner provided by the secretary. A registered pound may engage in the sale of dogs or cats under its control, if the privilege is allowed by the department, but no fee shall be charged unless the registered pound is privately owned. The registration fee for a privately owned pound that sells dogs or cats is fifteen dollars per year.

89 Acts, ch 296, §17 SF 141  
 Section in 1989 Code affirmed and reenacted; 89 Acts, ch 296, §17 SF 141  
 Footnote only; no amendment

#### 162.5 Pet shop license.

A person shall not operate a pet shop unless the person has obtained a license to operate a pet shop issued by the secretary. Application for the license shall be made in the manner provided by the secretary. The license expires one year from date of issue unless revoked and may be renewed in the manner provided by the secretary. The license fee is fifty dollars per year. The license may be renewed if the licensee has conformed to all statutory and regulatory requirements.

89 Acts, ch 296, §17 SF 141  
 Section in 1989 Code affirmed and reenacted; 89 Acts, ch 296, §17 SF 141  
 Footnote only; no amendment

#### 162.6 Commercial kennel or public auction license.

A person shall not operate a commercial kennel or public auction unless the person has obtained a license to operate a commercial kennel or a public auction issued by the secretary or unless the person has obtained a certificate of registration issued by the secretary if the kennel is federally licensed. Application for the license or the certificate shall be made in the manner provided by the secretary. The license and the certificate expire one year from date of issue unless revoked. The license fee is forty dollars per year and the certification fee is twenty dollars annually. If the person has obtained a federal license, the person need only obtain a certificate. The license may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary if the licensee has conformed to all statutory and regulatory requirements. The certificate may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary.

89 Acts, ch 15, §1 HF 292; 89 Acts, ch 296, §17 SF 141  
 Section in 1989 Code affirmed and reenacted; 89 Acts, ch 296, §17 SF 141  
 Section amended

#### 162.7 Dealer license.

A person shall not operate as a dealer unless the person has obtained a license issued by the secretary or unless the person has obtained a certificate of

registration issued by the secretary if the kennel is federally licensed. Application for the license or the certificate shall be made in the manner provided by the secretary. The license and certificate expire one year from date of issue unless revoked. The license fee is one hundred dollars per year and the certification fee is twenty dollars per year. The license may be renewed upon application and payment of the fee in the manner provided by the secretary if the licensee has conformed to all statutory and regulatory requirements. The certificate may be renewed upon application and payment of the fee in the manner provided by the secretary.

89 Acts, ch 15, §2 HF 292; 89 Acts, ch 296, §17 SF 141  
Section in 1989 Code affirmed and reenacted; 89 Acts, ch 296, §17 SF 141  
Section amended

### **162.8 Commercial breeder's license.**

A person shall not operate as a commercial breeder unless the person has obtained a license issued by the secretary or unless the person has obtained a certificate of registration issued by the secretary if the kennel is federally licensed. Application for the license or the certificate shall be made in the manner provided by the secretary. The annual license or the certification period expires one year from date of issue. The license fee is forty dollars per year and the certificate fee is twenty dollars per year. The license may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary if the licensee has conformed to all statutory and regulatory requirements. The certificate may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary.

89 Acts, ch 296, §18 SF 141  
Section amended

### **162.9 Boarding kennel operator's license.**

A person shall not operate a boarding kennel unless the person has obtained a license to operate a boarding kennel issued by the secretary. Application for the license shall be made in the manner provided by the secretary and expires one year from date of issue. The license fee is thirty dollars per year. The license may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary if the licensee has conformed to all statutory and regulatory requirements.

89 Acts, ch 296, §17 SF 141  
Section in 1989 Code affirmed and reenacted; 89 Acts, ch 296, §17 SF 141  
Footnote only; no amendment

### **162.10 Research facility registration.**

A person shall not operate a research facility unless the person obtains a certificate issued by the secretary. The certificate expires one year from date of issue. Application for the certificate shall be made in the manner provided by the secretary. A fee is not required for the application or certificate.

89 Acts, ch 296, §17 SF 141  
Section in 1989 Code affirmed and reenacted; 89 Acts, ch 296, §17 SF 141  
Footnote only; no amendment

## **CHAPTER 166C**

### **AUJESZKY'S DISEASE**

## CHAPTER 166D

## PSEUDORABIES CONTROL

**166D.1 Purpose—rules.**

This chapter provides for measures to control the transmission and incidence, and for the eventual eradication, of pseudorabies among swine within this state. The department shall adopt rules to carry out the provisions of this chapter.

89 Acts, ch 280, §1 SF 474  
NEW section

**166D.2 Definitions.**

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

1. "*Advisory committee*" means the state pseudorabies advisory committee composed of swine producers and other representatives of the swine industry, appointed pursuant to section 166D.3.

2. "*Approved premises*" means a dry lot facility located in an area with confirmed cases of pseudorabies infection, which is authorized by the department to receive, hold, or feed infected swine, exposed animals, or swine of unknown status. The premises and all swine on the premises shall be considered under quarantine. However, swine may be moved to slaughter under a transportation certificate or may be moved to another pseudorabies approved premises under a certificate of inspection.

3. "*Approved premises permit*" means a permit issued by the department necessary for a person to own and operate an approved premises.

4. "*Area eradication activity*" means activities related to testing herds for purposes of evaluation and control of swine within a program area to achieve pseudorabies eradication within the area.

5. "*Board of directors*" means a county or multicounty pork producer organization designated by the Iowa pork producers association to represent an area proposed as a program area.

6. "*Breeding swine*" means swine over six months of age.

7. "*Certificate of inspection*" means a document approved by the United States department of agriculture or the department of agriculture and land stewardship, and issued by a licensed veterinarian prior to the interstate or intrastate movement of swine. The certificate of inspection must state all of the following:

- a. The number, description, and identification of the swine to be moved.
- b. Whether the swine to be moved are known to be infected with or exposed to pseudorabies.
- c. The farm of origin.
- d. The purpose for moving the swine.
- e. The point of destination of the swine.
- f. The consignor and each consignee of the swine.
- g. Additional information as required by state or federal law.

8. "*Concentration point*" means a location or facility where swine are assembled for purposes of sale or resale for feeding, breeding, or slaughtering, and where contact may occur between groups of swine from various sources. "*Concentration point*" includes a public stockyard, auction market, street market, state or federal market, untested consignment sales location, buying station, or a live-stock dealer's yard, truck, or facility.

9. "*Differentiable test*" means a laboratory procedure approved by the department to diagnose pseudorabies. The procedure must be capable of recognizing and distinguishing between vaccine-exposed and field-pseudorabies-virus-exposed swine.

10. "*Differentiable vaccinate*" means a swine which has only been exposed to a differentiable vaccine.

11. "*Differentiable vaccine*" means a vaccine which has a licensed companion differentiable test.

12. "*Direct movement*" means movement of swine to a destination without unloading the swine in route, without contact with swine of lesser pseudorabies vaccinate status, and without contact with infected or exposed livestock.

13. "*Epidemiologist*" means a state or federal veterinarian designated to investigate and diagnose suspected pseudorabies in livestock. The epidemiologist must have had special training in the diagnosis and epidemiology of pseudorabies.

14. "*Exposed*" means an animal that has not been kept separate and apart or isolated from livestock infected with pseudorabies, including all swine in a known infected herd.

15. "*Exposed livestock*" means livestock that have been in contact with livestock infected with pseudorabies, including all livestock in a known infected herd. However, livestock other than swine that have not been exposed to a clinical case of the disease for a period of ten consecutive days shall not be considered exposed livestock. Swine released from quarantine are no longer considered exposed.

16. "*Farm of origin*" means a location where the swine were born, or on which the swine have been located for at least ninety consecutive days immediately prior to movement.

17. "*Feeder pig*" means an immature swine fed for purposes of direct slaughter which is less than slaughter weight.

18. "*Feeder pig cooperator herd*" means a swine herd not currently determined to be pseudorabies negative, that has not experienced clinical signs of pseudorabies in the last six months, that is capable of segregating offspring at weaning into separate and apart production facilities, and has implemented an approved pseudorabies eradication plan.

19. "*Feeder swine*" means a porcine animal fed for purposes of direct slaughter, including feeder pigs, cull sows, and boars. However, "*feeder swine*" does not include animals kept for purposes of breeding or reproduction.

20. "*Herd*" means a group of swine as established by departmental rule.

21. "*Herd cleanup plan*" means a plan to eliminate pseudorabies from a swine herd. The plan must be developed by an epidemiologist in consultation with the herd owner and the owner's veterinary practitioner. The plan must be approved and signed by the epidemiologist, the owner, and the practitioner. The plan must be approved and filed with the department.

22. "*Herd of unknown status*" means all swine except swine which are part of a known infected herd, swine known to have been exposed to pseudorabies, or swine which are part of a noninfected herd.

23. "*Infected*" means infected with pseudorabies as determined by an epidemiologist whose diagnosis is supported by test results.

24. "*Infected herd*" means a herd that is known to contain infected swine, a herd containing swine exhibiting clinical signs of pseudorabies, or a herd that is infected according to an epidemiologist.

25. "*Inspection service*" means the animal and plant health inspection service, United States department of agriculture.

26. "*Isolation*" means separation of swine within a physical barrier in a manner to prevent swine from gaining access to swine outside the barrier, including excrement or discharges from swine outside the barrier. Swine in isolation must not share a building with a ventilation system common to other swine. Swine in isolation must not be maintained within ten feet of other swine.

27. "*Known infected herd*" means a herd in which swine have been determined by an epidemiologist to be infected.

28. "*Licensed pseudorabies vaccine*" means a pseudorabies virus vaccine produced under license from the United States secretary of agriculture under the federal Virus, Serum and Toxin Act of March 4, 1913, 21 U.S.C. §151 et seq.

29. "*Livestock*" means swine, cattle, sheep, goats, and horses.

30. "*Monitored herd*" means a herd of swine, including a feeder swine herd, which has been determined within the past twelve months not to be infected, according to a statistical sampling.

31. "*Move*" or "*movement*" means to ship, transport, or deliver by land, water, or air.

32. "*Noninfected herd*" means a herd which is one of the following:

a. A qualified pseudorabies negative herd.

b. A pseudorabies monitored herd.

c. A pseudorabies controlled vaccinated herd.

d. A herd in which the animals have been individually tested negative within the past thirty days.

e. A herd which originates from an area with little or no incidence of pseudorabies as determined by the department based upon epidemiological studies and information relating to the area.

33. "*Nonvaccinate*" means a swine which has not been exposed to a pseudorabies vaccine.

34. "*Program area*" means an area designated to be given priority for assignment of a program funded eradication activity.

35. "*Pseudorabies*" means the contagious, infectious, and communicable disease of livestock and other animals known as Aujeszky's disease, mad itch, or infectious bulbar paralysis.

36. "*Pseudorabies eradication plan*" means a written herd management program which is based on accepted statistical and epidemiological evaluation and designed to eradicate pseudorabies from the swine herds in a given area.

37. "*Qualified negative herd*" means a herd in which one hundred percent of the herd's breeding swine have reacted negatively to a test or differentiable test and which is retested as provided in this chapter.

38. "*Quarantined herd*" means a herd in which pseudorabies infected or exposed swine are bred, reared, or fed under the supervision and control of the department. Swine in a quarantined herd may be moved only to an approved premises for feeding or to a recognized slaughtering establishment for slaughter. Either movement may be completed through a concentration point in compliance with section 166D.12.

39. "*Reaction*" means a result determined by an approved laboratory procedure designed to recognize pseudorabies virus infection or a nondifferentiable vaccinated animal.

40. "*Restricted movement*" means swine which are quarantined until directly moved to slaughter.

41. "*Separate and apart*" means to hold swine so that neither the swine nor organic material originating from the swine has physical contact with other animals.

42. "*Slaughtering establishment*" means a slaughtering establishment operated under the provision of the federal Meat Inspection Act, 21 U.S.C. §601 et seq., or a slaughtering establishment which has been inspected by the state.

43. "*Statistical sampling*" means a test based on at least a ninety percent probability of detecting at least a ten percent incidence of positive reaction within a herd.

44. "*Test*" means a serum neutralization (SN) test, virus isolation test, ELISA test, or other test approved by the department and performed by a laboratory approved by the department.

45. *“Transportation certificate”* means the same as provided in chapter 172B.

89 Acts, ch 280, §2 SF 474  
NEW section

### 166D.3 State pseudorabies advisory committee.

A state pseudorabies advisory committee is established. The committee shall consist of not more than seven members appointed by the Iowa pork producers association. At least four members must be actively engaged in swine production. The members shall serve staggered terms of two years, except that the initial board members shall serve unequal terms. A person appointed to fill a vacancy for a member shall serve only for the unexpired portion of the term. A member is eligible for reappointment for three successive terms. A majority of the board constitutes a quorum and an affirmative vote of the majority of members is necessary for substantive action taken by the board. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the board. The advisory committee shall:

1. Approve a proposed area as a program area as provided in section 166D.4.
2. Inform and educate interested persons in the state, including persons involved in producing, processing, or marketing swine, regarding eradication activities under this chapter.
3. Review eradication activities under this chapter including the pseudorabies eradication programs. The committee shall make recommendations to the department and the inspection service and may consult with state officials regarding any matter relating to pseudorabies control and eradication, including departmental rules, other state or federal regulations, program areas, the use of vaccine, testing procedures, the progress of pseudorabies eradication programs, and state and federal program standards. The committee in cooperation with the department shall report to the governor and general assembly not later than January 15 the progress of pseudorabies eradication, including recommendations.
4. Maintain communication with other states and with the national pork producers council, the livestock conservation institute, and the inspection service.

89 Acts, ch 280, §3 SF 474  
NEW section

### 166D.4 Establishing program areas.

The department may establish pseudorabies program areas within the state. A program area shall be a county. The department shall declare the following counties to be individual program areas: Cherokee, Buena Vista, Fayette, Grundy, Hardin, Marshall, O'Brien, Story, Tama, and Washington.

An area shall be designated a pseudorabies program area when all of the following conditions are met:

1. The pork producer board of directors within the area proposed as a program area approved by a two-thirds majority vote to designate the area as a program area.
2. Within thirty days from the board's vote designating the area as a program area, the department must conduct a public hearing and referendum within the proposed area according to rules adopted by the department. The department in cooperation with the advisory committee shall certify persons as pork producers eligible to vote in the referendum. The department shall take minutes of the hearing and collect written testimony. The department shall publish at least seven days' advance notice of the hearing and referendum in all newspapers of general circulation within the proposed area. The department shall also notify by first class mail, the county agricultural extension director within the proposed area, the Iowa pork producers association, and the members of the advisory committee. The notice must contain the time, place, and subject of the hearing and referendum. During the hearing, the department shall communicate to

attending producers information relating to eradication program requirements by the state, other states and by the federal government, and requirements for designating the proposed area as a program area, including the result of the board's vote to designate the proposed area as a program area, and referendum requirements to designate the proposed area as a program area.

At least twenty-five producers in the proposed area must participate in the referendum to designate the proposed area as a program area. At least seventy-five percent of the attending producers must by secret ballot vote in favor of the referendum. Producers may vote by written proxy. The votes shall be counted at the hearing and the marked ballots shall be filed with the department.

The department shall distribute a sheet with the ballot for a voting producer to indicate interest in participating in an eradication program.

3. The advisory committee shall review the minutes of the hearing, and the results of the referendum. The committee must approve the designation of the proposed area as a designated area.

The department, within thirty days of approval by the committee, shall send written notice by ordinary first class mail to all known pork producers residing in the area. The area shall be designated a program area after ten days following mailing of the notice to the last known producer's address.

89 Acts, ch 280, §4 SF 474  
NEW section

#### **166D.5 Administration of program areas.**

Once a program has been designated, an owner of an infected herd must, within thirty days, adopt a herd cleanup plan or a feeder pig cooperator herd cleanup plan, as provided in section 166D.8. An infected herd which is not subject to a cleanup plan or a feeder pig cooperator herd cleanup plan is a quarantined herd.

When the department determines that a majority of herds within a program area have been tested and the majority of herds reveal a noninfection rate of ninety percent or greater, the following shall apply:

1. A vaccine other than a differentiable vaccine shall not be used.
2. A concentration point within the program area may market all classes of swine. Swine taken to a concentration point must be held there until transfer. However, untested, known infected, or exposed swine shall be transferred from the concentration point within three days only to persons moving the swine outside the program area.
3. Six months after determination by the department that a majority of herds within the program area have been tested and the majority of herds reveal a noninfection rate of ninety percent or greater, the following shall apply:
  - a. Only noninfected herd swine may move into the program area.
  - b. Swine herds within the area must be a qualified negative herd, a monitored herd, or must be involved in a herd cleanup plan or feeder pig cooperator herd plan.
  - c. Swine moving within or into the program area must be reported to the department within ten days of movement and be identified by farm of origin. Swine moving into a program area may be inspected by the department within thirty days from the swine's arrival.
  - d. An approved premises inside the program area shall not be reapproved upon its annual renewal date.

4. At the commencement of the program and at intervals during the course of the program, the owner of a feeder pig cooperator herd may, according to rules adopted by the department, receive new swine from noninfected herds.

The cost, or any segment of the cost, of the program, testing, and vaccination may be paid for by federal or state funds or a combination of both. Federal or state funds shall not be paid to the owner of a vaccinated herd in a program area other than the owner of a herd using a differentiable vaccine. If federal or state funds

are not available, producers may continue the program at their own expense under departmental supervision.

An additional program area shall not be established if funds sufficient for administration of the program within the area are not available. Program funds shall not be spent outside a program area, unless recommended by the advisory committee and approved by the department. However, this paragraph does not apply to expenditures of funds for statewide surveillance or for enforcement of this chapter.

89 Acts, ch 280, §5 SF 474  
NEW section

#### **166D.6 Reporting of test results.**

All tests under this chapter must be taken by a test administered by a licensed veterinarian. Test samples are to be collected by or under the direction of the department and a licensed veterinarian. If the test is determined by a laboratory located outside the state of Iowa, the person whose animal has been tested shall be responsible for assuring that the result is reported to the department within fourteen days following completion of the test. Swine sampled shall be identified with a numbered metal ear tag. The department shall make the ear tags available. Ear notches or other numbered identification methods approved by the department may be used at the herd owner's expense.

Test results shall be reported on forms prescribed by the department signed by the veterinarian and transmitted to the department within fourteen days following completion of the tests. Copies shall be made available to the attending veterinarian. Upon receipt, the attending veterinarian shall provide copies to the herd owner.

89 Acts, ch 280, §6 SF 474  
NEW section

#### **166D.7 Noninfected herds.**

In administering the pseudorabies eradication program, the department shall regulate noninfected herds as follows:

1. A qualified negative herd must be certified, recertified, and maintained as follows:

a. The herd shall be certified when all breeding swine have reacted negatively to a test. The herd must have been free from infection for thirty days prior to testing. At least ninety percent of swine in the herd must have been on the premises as a part of the herd for at least sixty days prior to testing, or swine in the herd must have been moved directly from another qualified negative herd. To remain certified, the herd must be retested and recertified as provided by the department. The herd shall be recertified when either of the following occurs:

(1) Each eighty to one hundred five days at least twenty-five percent of the herd's breeding swine react negatively to a test.

(2) Each month at least ten percent of the herd's breeding swine react negatively to a test.

b. Before being added to the herd new swine including swine returning to the herd after contact with nonherd swine, shall be isolated until the new swine react negatively to a test conducted thirty days or more after the swine has been placed in isolation. Swine from a herd of unknown status must react negatively to a test not more than thirty days prior to movement from the herd of unknown status and retested in isolation at least thirty days after movement onto the premises where the qualified negative herd is located.

c. Swine from another qualified negative herd may be added without isolation or testing.

d. The owner shall make a request to the department for approval or reapproval of a qualified negative herd when the required tests are completed. Upon

satisfactory proof that all requirements have been met, the herd shall be recertified by the department.

2. A controlled vaccinated herd shall be recognized as a noninfected herd until July 1, 1991. A controlled vaccinated herd shall be initially certified, recertified, and maintained as follows:

a. The herd shall be certified when all breeding swine react negatively to a test and are vaccinated with a licensed pseudorabies vaccine within fifteen days after the test. At least ninety percent of the swine in the herd must have been on the premises as part of the herd for at least sixty days prior to testing, or swine in the controlled vaccinated herd must have been directly moved from a qualified negative herd.

b. To remain certified the herd must be retested and recertified as provided by the department each three months. The herd shall be recertified after the number of the herd's progeny over four months of age equal to at least twenty-five percent of the breeding herd react negatively to the test every eighty to one hundred five days.

c. Before being added to the herd new swine must react negatively within thirty days prior to movement, and be vaccinated with a licensed pseudorabies vaccine within fifteen days after the test. The new swine must be added to the herd within thirty days after the test.

3. A monitored herd shall be initially certified, recertified, and maintained as follows:

a. The herd shall be certified when a statistical sampling of the herd is determined to be noninfected.

b. To remain certified the herd must be retested and recertified as provided by the department. The herd must be recertified annually. The herd shall be recertified when a statistical sampling of the herd is determined to be noninfected within twelve months from initial certification or the most recent recertification.

c. A monitored herd may receive new swine into the herd from a noninfected herd.

89 Acts, ch 280, §7 SF 474  
NEW section

### 166D.8 Infected herds.

An infected herd in a program area shall either adopt a herd cleanup plan, a feeder pig cooperator herd plan, or shall be quarantined.

1. A herd cleanup plan may include any or a combination of the following:

a. The segregation of progeny with restricted movement.

b. The test and removal of infected swine from the herd.

c. Depopulation.

2. A feeder pig cooperator herd plan may be adopted if all of the following conditions are satisfied:

a. There must have been no clinical signs of pseudorabies during the past six months.

b. The production operation must be capable of segregating offspring at weaning into facilities separate and apart from the remainder of the herd.

c. An approved pseudorabies eradication plan must be implemented. However, swine from a feeder pig cooperator herd may be moved within Iowa without individual tests as feeder pigs of unknown origin.

3. Infected herds in a program area which have not adopted an official herd cleanup plan or feeder pig cooperator herd plan shall be quarantined.

4. Costs of program testing and vaccination shall be paid as provided in section 166D.5.

An infected herd outside a program area shall either adopt a herd cleanup plan or a feeder pig cooperator herd plan with restricted movement. An infected herd not subject to such a plan within thirty days of becoming a known infected herd

shall be quarantined. An infected herd which is not subject to a herd cleanup plan or a feeder pig cooperator herd plan is a quarantined herd.

89 Acts, ch 280, §8 SF 474  
NEW section

### 166D.9 Quarantined herds.

1. Swine from a quarantined herd shall not be removed from the herd except as follows:

a. The swine may be moved directly to slaughter through a slaughtering establishment, slaughter market, public stockyard, packer buying station, or directly to a slaughter plant if the swine are accompanied by a transportation certificate.

b. Feeder pigs may be removed for further feeding to an approved premises when accompanied by a certificate of inspection. Feeder pigs may move through a concentration point no more than one time.

2. Swine from a quarantined herd shall not be moved to show at public exhibitions.

3. A herd shall be released from quarantine when no animal, including livestock, on the premises shows clinical symptoms of pseudorabies. In addition one of the following must occur:

a. The swine have been removed from the premises, the premises have been cleaned and disinfected under supervision of the department or the inspection service. The disinfectant shall be approved by the department or inspection service. The premises must have been maintained free of swine for thirty days. However, the epidemiologist for good cause may determine that premises be maintained free of swine for a period greater or less than thirty days.

b. Swine reacting positively to a test have been removed from the premises. Remaining swine, except suckling pigs, must be tested and react negatively to the test thirty days or more after removal of the herd's swine reacting positively to the test.

c. The swine reacting positively to a test have been removed from the premises. At least thirty days after removal of the positive swine, breeding swine remaining plus a random sample equaling twenty-eight of grower-finishing swine more than two months of age must react negatively to the test. While the state is in stage III or IV of the national pseudorabies program pursuant to federal regulations, the grower-finisher swine must react negatively to a test at least thirty days after reacting negatively to the last test.

4. While the state is classified in either stage I or II of the national pseudorabies program pursuant to federal regulations, the following requirements must be satisfied:

a. All swine present on the date the quarantine was imposed have been removed.

b. There must have been no clinical signs of pseudorabies in the herd for at least six months.

c. The epidemiologist must conduct two successive statistical samplings at least ninety days apart which reveal no infection within the new breeding swine.

d. The epidemiologist must conduct two successive statistical samplings ninety days apart of the herd's progeny at least four months of age which reveal no infection.

Herd removed from quarantine under this subsection shall be tested by statistical sampling one year later.

5. A person shall not accept swine from a quarantined herd for the purpose of feeding without receiving an approved premises permit by the department. The approved premises permit shall allow the owner of the approved premises to

receive feeder swine from a quarantined herd for purposes of feeding the swine at the approved premises. The approved premises permit shall require all of the following:

a. The permittee must provide to the department during normal business hours access to the approved premises and records required by this section. Records of swine transfers must be kept for at least one year. The records shall include information about purchases and sales, the names of buyers and sellers, the dates of transactions, and the number of swine involved in each transaction.

b. Swine on the premises must be maintained in isolation.

c. Breeding swine must not be maintained on the premises. However, cull sows and boars may be maintained, if fed out to slaughter.

d. Feeder swine must be vaccinated for pseudorabies at the owner's expense on arrival at the approved premises. Vaccination records must be maintained by the owner of the approved premises for at least one year after vaccination.

e. Dead swine must be disposed of in accordance with chapter 167. The dead swine must be held so as to prevent animals, including wild animals and livestock, from reaching the dead swine.

f. Swine must be directly moved to slaughter, accompanied by a transportation certificate or to another approved premises with a certificate of inspection.

An approved premises shall not be permitted in the vicinity of a qualified negative herd.

An approved premises permit shall be renewed annually by the department. The approved premises permit shall be renewed if the district veterinarian finds that the approved premises is and has been in compliance with this chapter and federal law. The department may suspend or cancel the permit for noncompliance. When a permit is suspended, canceled, or not renewed, the premises remains under quarantine until released pursuant to the provisions of this section.

89 Acts, ch 280, §9 SF 474  
NEW section

### 166D.10 Movement of swine.

1. A person shall not sell, lease, exhibit, or loan swine within the state, except to slaughter, unless the swine are accompanied by a certificate of inspection provided by the owner transferring possession. However, a native Iowa feeder pig moved from farm to farm within the state is exempt from the certificate of inspection's identification requirements if the owner transferring possession and the person taking possession state on the certificate of inspection that the feeder swine will not be commingled with other swine for a period of thirty days.

Swine moved into or within Iowa for breeding purposes must originate from a herd not under quarantine which is one of the following:

a. A herd classified as a qualified negative herd.

b. A controlled vaccinated herd which complies with the provisions of section 166D.7, subsection 2.

c. Swine which have individually reacted negatively to testing within the past thirty days.

2. Imported feeder pigs shall originate from noninfected herds. An imported feeder pig shall be subject to restricted movement, unless the pig reacted negatively to a test within the past thirty days.

3. A feeder pig moved intrastate shall be moved according to the following:

a. A feeder pig in a noninfected herd shall not be subject to restricted movement.

b. A feeder pig in a herd of unknown pseudorabies status as provided shall be subject to restricted movement.

c. A feeder pig in a known infected herd shall be subject to restricted movement by certificate of inspection and only to an approved premises.

89 Acts, ch 280, §10 SF 474  
NEW section

#### **166D.11 Differentiable vaccine required.**

Beginning on December 1, 1989, swine other than unvaccinated or differentiable vaccinated swine shall not be sold, marketed, or moved within this state, except to slaughter or to an approved premises by certificate of inspection.

89 Acts, ch 280, §11 SF 474  
NEW section

#### **166D.12 Concentration points.**

If swine are not isolated from swine subject to different movement restrictions, the swine shall be restricted to the same extent as the swine which are subject to the most movement restrictions. After movement of infected swine or swine of unknown origin through the concentration point, the concentration point must be thoroughly cleaned and disinfected. The cleaned and disinfected concentration point must be inspected by a veterinarian.

1. Swine from noninfected herds may be moved through a concentration point, provided all of the following apply:

- a. Breeding swine must be kept separate and apart from feeder pigs.
- b. Breeding swine must be sold first.
- c. Only swine from noninfected herds may be moved through a concentration point.
- d. Slaughter swine shall not be moved through a concentration point.
- e. A feeder pig moving through a concentration point in this manner may move through a concentration point after thirty days as a pig of unknown origin, unless the pig reacts negatively to a test.

2. A feeder pig from a noninfected herd and a feeder pig from a herd of unknown status may be moved through the same concentration point, provided all of the following apply:

- a. The entire offering for a transaction, including a sale, must represent all swine as coming from herds of unknown status, regardless of the swine's farm of origin.
- b. Slaughter or breeding swine must not be moved through the concentration point.
- c. Swine shall not be moved through a concentration point unless subject to restricted movement.

3. Feeder pigs from herds of unknown status and slaughter swine may be moved through a concentration point if all of the following apply:

- a. The feeder pigs must be kept separate and apart from the slaughter swine.
- b. The feeder pigs must be moved through prior to the movement of any slaughter swine.

- c. Breeding swine must not be moved through the concentration point.
  - d. The swine shall not be moved through unless quarantined to slaughter.
4. Swine from known infected herds may be moved through a concentration point provided all of the following apply:

- a. Other species of livestock must not be held at the concentration point.
- b. Only owners with approved premises permits are eligible to take possession of swine for movement to the approved premises.
- c. The swine after movement through the concentration point must be quarantined to slaughter or moved to slaughter.

89 Acts, ch 280, §12 SF 474  
NEW section

#### **166D.13 Exhibition of swine.**

1. Swine from a quarantined herd shall not be displayed or shown at any exhibition.

2. Swine returning from an exhibition to its home herd or moved to a purchaser's herd following an exhibition or consignment sale must be isolated and retested negative for pseudorabies not less than thirty and not more than sixty days after reaching the swine's destination.

3. Animals infected shall not be shown or displayed at an exhibition.

4. Rules controlling exhibition movement requirements may be adopted by the department in addition to the requirements of this section.

89 Acts, ch 280, §13 SF 474  
NEW section

#### **166D.14 Pseudorabies immunization products.**

A person shall not use, sell, or distribute or offer to sell or distribute a pseudorabies immunization product within the state unless the products are approved by the secretary. However, the secretary shall approve a pseudorabies immunization product for purposes of product research or testing by a biological laboratory, government authority, or manufacturer of biological products if the secretary concludes that the use will not be detrimental to the state pseudorabies disease program.

Only a licensed veterinarian may buy and dispense a department-approved immunization product. The veterinarian must report information relating to the use of the product to the department, including the name and address of the owner and the number of doses used. The report shall be signed by the owner or the owner's agent. The report shall be mailed to the department immediately after the use of the product.

A differentiable vaccinate to be classified as a noninfected animal must react negatively to field strains of pseudorabies virus as determined by a companion differentiable serologic test. The swine must be identified as differentiable vaccinated animals.

89 Acts, ch 280, §14 SF 474  
NEW section

#### **166D.15 Tracing pseudorabies to source or destination herds.**

1. The owner of a known infected herd shall furnish to the department all of the following information:

a. A list of sources of feeder pigs or breeding swine during the preceding twelve months.

b. A list of sales of feeder pigs or breeding swine during the preceding twelve months.

2. If pseudorabies is diagnosed in breeding swine or feeder pigs which have been purchased from or sold to another swine producer within ninety days from the sale, the department may require a statistical sample of the breeding herd of the seller or buyer and a statistical sample of the herd progeny over four months. If the owner of the herd refuses to allow the test, the herd shall be classified as a known infected herd.

3. Tests conducted pursuant to this section shall be completed at the owner's expense unless state funds are available for this purpose.

89 Acts, ch 280, §15 SF 474  
NEW section

#### **166D.16 Enforcement.**

The provisions of this chapter including departmental rules adopted pursuant to this chapter shall be administered and enforced by the department. A person violating a provision of this chapter or any rule adopted pursuant to this chapter shall be subject to a civil penalty of at least one hundred dollars but not more than one thousand dollars.

In addition to any other remedies provided, the department may file a petition in the district court seeking an injunction restraining any person from violating provisions of this chapter including a rule adopted pursuant to this chapter.

89 Acts, ch 280, §16 SF 474  
NEW section

## CHAPTER 169

### VETERINARY PRACTICE ACT

#### 169.14 Procedure for suspension or revocation.

A proceeding for the revocation or suspension of a license to practice veterinary medicine or to discipline a person licensed to practice veterinary medicine shall be substantially in accord with the following:

1. The board, upon its own motion or upon a verified complaint in writing, may request the department of inspections and appeals to conduct an investigation of the charges contained in the complaint. The department of inspections and appeals shall report its findings to the board, and the board may issue an order fixing the time and place for hearing if a hearing is deemed warranted. A written notice of the time and place of the hearing, together with a statement of the charges, shall be served upon the licensee at least ten days before the hearing in the manner required for the service of notice of the commencement of an ordinary action.

2. If the licensee has left the state, the notice and statement of the charges shall be so served at least twenty days before the date of the hearing, wherever the licensee may be found. If the whereabouts of the licensee is unknown, service may be had by publication as provided in the rules of civil procedure upon filing the affidavit required by those rules. If the licensee fails to appear either in person or by counsel at the time and place designated in the notice, the board shall proceed with the hearing.

3. The hearing shall be before a member or members designated by the board or before an administrative law judge appointed by the board. The presiding board member or administrative law judge may issue subpoenas, administer oaths, and take or cause depositions to be taken in connection with the hearing. The member or officer shall issue subpoenas at the request and on behalf of the licensee.

4. A mechanized or stenographic record of the proceedings shall be kept. The licensee shall be given the opportunity to appear personally and by attorney, with the right to produce evidence in one's own behalf, to examine and cross-examine witnesses, and to examine documentary evidence produced against the licensee.

5. If a person refuses to obey a subpoena issued by the presiding member or administrative law judge or to answer a proper question put to that person during the hearing, the presiding member or administrative law judge may invoke the aid of a court of competent jurisdiction in requiring the attendance and testimony of that person and the production of papers. A failure to obey the order of the court may be punished by the court as a civil contempt may be punished.

6. Unless the hearing is before the entire board, a transcript of the proceeding, together with exhibits presented, shall be considered by the entire board at the earliest practicable time. The licensee and attorney shall be given the opportunity to appear personally to present the licensee's position and arguments to the board. The board shall determine the charge upon the merits on the basis of the evidence in the record before it.

7. Upon three members of the board voting in favor of finding the licensee guilty of an act or offense specified in section 169.13, the board shall prepare written findings of fact and its decision imposing one or more of the following disciplinary measures:

a. Suspend the license to practice veterinary medicine for a period to be determined by the board.

b. Revoke the license to practice veterinary medicine.

c. Suspend imposition of judgment and penalty or impose the judgment and penalty, but suspend enforcement and place the veterinarian on probation. The probation ordered may be vacated upon noncompliance. The board may restore and reissue a license to practice veterinary medicine, and may impose a disciplinary or corrective measure which it might originally have imposed.

8. Judicial review of the board's action may be sought in accordance with chapter 17A.

9. The filing of a petition for review does not in itself stay execution or enforcement of board action. Upon application, the board or the review court, in appropriate cases, may order a stay pending the outcome of the review proceedings.

89 Acts, ch 296, §19 SF 141  
Subsection 8 amended

## CHAPTER 172B

### TRANSPORTATION OF LIVESTOCK

#### 172B.3 Form of certificate—substitutes.

1. *Duties of secretary.* The secretary, pursuant to chapter 17A, shall prescribe a standard form of the transportation certificate required by this chapter. Where the laws of this state or of the United States require the possession of another shipping document by a person transporting livestock, or where the industry practice of carriers requires the possession of a shipping document by a person transporting livestock, and where such a document contains all of the information other than signatures which is prescribed in subsection 2, upon application of a carrier the secretary by rule shall authorize the use of a specific document in lieu of the standard form prescribed by the secretary, but subject to any conditions the secretary may impose. A person who is in possession of a shipping document approved by the secretary shall not be required to possess the standard form transportation certificate prescribed by the secretary, but the person may be required by a law enforcement officer to execute the standard form transportation certificate.

The form prescribed or authorized by the secretary shall be executed in triplicate, and shall be retained as provided in section 172B.4.

The secretary shall distribute, upon request, copies of the prescribed standard form to veterinarians, marketing agencies, carriers, law enforcement officers, and other persons, and may collect a fee from the recipient totaling not more than the cost of printing and postage. Nothing in this chapter shall be construed to prohibit a person from causing the reproduction of the standard form, and an accurate reproduction of a standard current form may be used as a transportation certificate for all purposes.

2. *Contents.* The transportation certificate shall contain the following information:

- a. The date of execution of the certificate.
- b. The name, driver's license number, and address of the owner of the livestock.
- c. The name and address of the shipper if other than the owner.
- d. The address of the loading point of the livestock, or the nearest post office and county.
- e. The date of loading of the livestock.
- f. The name and address of the purchaser, consignee, or other person receiving shipment.

- g.* The address of the destination of the livestock, or the nearest post office and county.
- h.* The name and address of the carrier or person transporting livestock.
- i.* The motor vehicle operator's license number of the person transporting livestock.
- j.* The vehicle license number and the state of issuance.
- k.* The vehicle seal number, if any.
- l.* The form number and state of issuance of any health certificate accompanying the livestock.
- m.* A description of the livestock including number, breed, sex, age, and brands, if any.
- n.* The signature of the owner or shipper, or the signature of the person transporting livestock, or the signatures of either the owner or shipper and the person transporting livestock.

89 Acts, ch 202, §1 SF 497  
 Subsection 2, paragraph b amended

## CHAPTER 172C

### CORPORATE OR PARTNERSHIP FARMING

Life insurance company or association is a corporation for purposes of this chapter; §511.8A

#### **172C.4 Restriction on increase of holdings—exceptions—penalty.**

No corporation or trust, other than a family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary trust shall, either directly or indirectly, acquire or otherwise obtain or lease any agricultural land in this state. However, the restrictions provided in this section shall not apply to the following:

1. A bona fide encumbrance taken for purposes of security.
2. Agricultural land acquired for research or experimental purposes. Agricultural land is used for research or experimental purposes if any of the following apply:
  - a.* Research and experimental activities are undertaken on the agricultural land and commercial sales of products produced from farming the agricultural land do not occur or are incidental to the research or experimental purposes of the corporation. Commercial sales are incidental to the research or experimental purposes of the corporation when such sales are less than twenty-five percent of the gross sales of the primary product of the research.
  - b.* The agricultural land is used for the primary purpose of testing, developing, or producing seeds or plants for sale or resale to farmers as seed stock. Grain which is not sold as seed stock is an incidental sale and must be less than twenty-five percent of the gross sales of the primary product of the research and experimental activities.
  - c.* The agricultural land is used by a corporation, including any trade or business which is under common control, as provided in 26 U.S.C. §414 for the primary purpose of testing, developing, or producing animals for sale or resale to farmers as breeding stock. However, after July 1, 1989, to qualify under this paragraph, the following conditions must be satisfied:
    - (1) The corporation must not hold the agricultural land other than as a lessee. The term of the lease must be for not more than twelve years. The corporation shall not renew a lease. The corporation shall not enter into a lease under this paragraph, if the corporation has ever entered into another lease under this

paragraph "c", whether or not the lease is in effect. However, this subparagraph does not apply to a domestic corporation organized under chapter 504 or 504A.

(2) A term or condition of sale, including resale, of breeding stock must not relate to the direct or indirect control by the corporation of the breeding stock or breeding stock progeny subsequent to the sale.

(3) The number of acres of agricultural land held by the corporation must not exceed six hundred forty acres.

(4) The corporation must deliver a copy of the lease to the secretary of state. The secretary of state shall notify the lessee of receipt of the copy of the lease. However, this subparagraph does not apply to a domestic corporation organized under chapter 504 or 504A.

Culls and test animals may be sold under this paragraph "c". For a three-year period beginning on the date that the corporation acquires an interest in the agricultural land, the gross sales for any year shall not be greater than five hundred thousand dollars. After the three-year period ends, the gross sales for any year shall not be greater than twenty-five percent of the gross sales for that year of the breeding stock, or five hundred thousand dollars, whichever is less.

3. Agricultural land, including leasehold interests, acquired by a nonprofit corporation organized under the provisions of chapters 504 and 504A including land acquired and operated by or for a state university for research, experimental, demonstration, foundation seed increase or test purposes and land acquired and operated by or for nonprofit corporations organized specifically for research, experimental, demonstration, foundation seed increase or test purposes in support of or in conjunction with a state university.

4. Agricultural land acquired by a corporation for immediate or potential use in nonfarming purposes.

5. Agricultural land acquired by a corporation by process of law in the collection of debts, or pursuant to a contract for deed executed prior to August 15, 1975, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise.

6. A municipal corporation.

7. Agricultural land which is acquired by a trust company or bank in a fiduciary capacity or as trustee for a family trust, authorized trust or testamentary trust or for nonprofit corporations.

8. A corporation or its subsidiary organized under chapter 491 and to which section 312.8 is applicable.

9. Agricultural land held or leased by a corporation on July 1, 1975, as long as the corporation holding or leasing the land on this date continues to hold or lease such agricultural land.

10. Agricultural land held or leased by a trust on July 1, 1977, as long as the trust holding or leasing such land on this date continues to hold or lease such agricultural land.

11. Agricultural land acquired by a trust for immediate use in nonfarming purposes.

Any corporation or trust, other than a family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary 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. 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.

89 Acts, ch 311, §23 HF 778  
Subsection 2 stricken and rewritten

### **172C.6 Lessees conducting research or experiments—reports.**

Lessees of agricultural land under section 172C.4, subsection 2, paragraph “c”, for research or experimental purposes, shall file a report with the secretary of state on or before March 31 of each year on forms adopted pursuant to chapter 17A and supplied by the secretary of state. The report shall contain the following information for the last year:

1. The name and principal place of business of the lessee.
2. The location of the agricultural land used for research or experimental purposes.
3. The date that the lease became effective.
4. The name and address of each person purchasing breeding stock produced on the agricultural land.
5. The number or volume of breeding stock purchased by each person purchasing breeding stock produced on the agricultural land.

89 Acts, ch 311, §24 HF 778  
NEW section

## CHAPTER 172D

### LIVESTOCK FEEDLOTS

#### **172D.1 Definitions.**

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

1. “*City*” means a municipal corporation, but not including a county, township, school district, or any special-purpose district or authority.
2. “*Department*” means the department of environmental quality in a reference to a time before July 1, 1983, the department of water, air and waste management in a reference to a time on or after July 1, 1983, and through June 30, 1986, and the department of natural resources on or after July 1, 1986, and includes any officer or agency within that department.
3. “*Established date of operation*” means the date on which a feedlot commenced operating with not more livestock than reasonably could be maintained by the physical facilities existing as of that date. If the physical facilities of the feedlot are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent “established date of operation” established as of this date of commencement of the expanded operations, and the commencement of expanded operations shall not divest the feedlot of a previously established date of operation.
4. “*Established date of ownership*” means the date of the recording of an appropriate muniment of title establishing the ownership of realty.
5. “*Establishment cost of a feedlot*” means the cost or value of the feedlot on its established date of operation and includes the cost or value of the building, machinery, vehicles, equipment or other real or personal property used in the operation of the feedlot.
6. “*Feedlot*” means a lot, yard, corral, or other area in which livestock are confined, primarily for the purposes of feeding and growth prior to slaughter. The term does not include areas which are used for the raising of crops or other vegetation and upon which livestock are allowed to graze or feed.

7. A rule pertaining to “*feedlot design standards*” means a rule, the implementation of which, or the compliance with which, requires the expenditure of funds in excess of two percent of the establishment cost of the feedlot.

8. A rule pertaining to “*feedlot management standards*” means a rule, the implementation of which, or the compliance with which, requires the expenditure of funds not in excess of two percent of the establishment cost of the feedlot.

9. “*Livestock*” means cattle, sheep, swine, poultry, and other animals or fowl, which are being produced primarily for use as food or food products for human consumption.

10. “*Materially affects*” means prohibits or regulates with respect to the location, or the emission of noise, effluent, odors, sewage, waste, or similar products resulting from the operation or the location or use of buildings, machinery, vehicles, equipment, or other real or personal property used in the operation, of a livestock feedlot.

11. “*Nuisance*” means and includes public or private nuisance as defined either by statute or by the common law.

12. “*Nuisance action or proceeding*” means and includes every action, claim or proceeding, whether brought at law, in equity, or as an administrative proceeding, which is based on nuisance.

13. “*Owner*” shall mean the person holding record title to real estate to include both legal and equitable interests under recorded real estate contracts.

14. “*Rule of the department*” means a rule as defined in section 17A.2 which materially affects the operation of a feedlot and which has been adopted by the department. The term includes a rule which was in effect prior to July 1, 1975. Except as specifically provided in section 172D.3, subsection 2, paragraph “*b*”, subparagraph (5) and paragraph “*c*”, subparagraph (5) nothing in this chapter shall be deemed to empower the department to make any rule.

15. “*Zoning requirement*” means a regulation or ordinance, which has been adopted by a city, county, township, school district, or any special-purpose district or authority, and which materially affects the operation of a feedlot. Nothing in this chapter shall be deemed to empower any agency described in this subsection to make any regulation or ordinance.

89 Acts, ch 83, §31 SF 112  
Subsection 2 amended

## CHAPTER 173

### STATE FAIR AND EXPOSITION

#### 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.

In order to efficiently administer facilities and events on the state fairgrounds, and to promote Iowa’s conservation ethic, the Iowa state fair board shall handle or dispose of waste generated on the state fairgrounds under supervision of the waste management authority established under section 455B.483.

89 Acts, ch 311, §25 HF 778  
NEW unnumbered paragraph 2

## CHAPTER 175

## AGRICULTURAL DEVELOPMENT

**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.

10. Bonds and notes issued by the authority for purposes of financing the beginning farmer loan program provided in section 175.12 are exempt from taxation by the state, and interest earned on the bonds and notes is deductible in determining net income for purposes of the state individual and corporate income tax under divisions II and III of chapter 422.

89 Acts, ch 175, §1 SF 423

\*Section 554.9101 et seq.

NEW subsection 10

## CHAPTER 179

## DAIRY INDUSTRY COMMISSION

**179.5A Right to refund not subject to legal process or transfer.**

The right of a person to a refund under this chapter or under chapter 181, 182, 183A, 184A, 185, or 185C is not subject to execution, levy, attachment, garnishment, or other legal process, and is not transferable or assignable at law or in equity.

89 Acts, ch 137, §1 SF 386  
Section amended

## CHAPTER 185C

## CORN PROMOTION BOARD

**185C.1 Definitions.**

As used in this chapter:

1. *"Assessment"* means a state or federal assessment.
2. *"Board"* means the Iowa corn promotion board established by this chapter.
3. *"Bushel"* means fifty-six pounds of corn by weight.
4. *"Corn"* means and includes all kinds of varieties of corn marketed or sold as corn by the producer but shall not include sweet corn or popcorn or seed corn.
5. *"District"* means an official crop reporting district formed by the United States department of agriculture and set out in the annual farm census published by the Iowa department of agriculture and land stewardship.
6. *"Federal assessment"* means a federal excise tax or other charge which is imposed for purposes related to market development.
7. *"First purchaser"* means a person, public or private corporation, governmental subdivision, association, co-operative, partnership, commercial buyer, dealer, or processor who purchases corn from a producer for the first time for any purpose except to feed it to the purchaser's livestock or to manufacture a product from the corn purchased for the purchaser's personal consumption.
8. *"Market development"* means to engage in research and educational programs directed toward better and more efficient utilization of corn; to provide methods and means, including but not limited to, public relations and other promotion techniques for the maintenance of present markets; to provide for the development of new or larger domestic and foreign markets; and to provide for the prevention, modification, or elimination of trade barriers which obstruct the free flow of corn.
9. *"Marketed in this state"* refers to a sale of corn to a first purchaser who is a resident of or doing business in this state where actual delivery of the corn occurs in this state.
10. *"Marketing year"* means the twelve-month period beginning the first day of September and ending on the following thirty-first day of August.
11. *"Producer"* means any individual, firm, corporation, partnership, or association engaged in this state in the business of producing and marketing in their name at least two hundred fifty bushels of corn in the previous marketing year.
12. *"Promotional order"* means an order administered pursuant to this chapter which establishes a program for the promotion, research, and market development of corn and provides for a state assessment to finance the program.
13. *"Sale"* or *"purchase"* includes but is not limited to the pledge or other encumbrance of corn as security for a loan extended under a federal price support loan program. Actual delivery of the corn occurs when the corn is pledged or otherwise encumbered to secure the loan. The purchase price of the corn is the

principal amount of the loan extended and the purchase invoice for the corn is the documentation required for extension of the loan.

14. "State assessment" means a state excise tax on each bushel of corn marketed in this state which is imposed for purposes related to market development.

89 Acts, ch 198, §1-3 HF 734  
Further definitions; see §159.1  
Subsections 1 and 11 amended  
NEW subsections 13 and 14

### 185C.7 Terms of directors.

Director terms shall be for three years and no director of the board shall serve for more than three complete consecutive terms.

If the board is reconstituted pursuant to section 185C.8, the terms of the directors shall be controlled by this section. However, the initial terms of the reconstituted board shall be staggered. To the extent practicable, one-third of the elected directors shall serve an initial term of one year, one-third of the elected directors shall serve an initial term of two years, and one-third of the elected directors shall serve an initial term of three years. The terms shall be determined by board members drawing lots. The board elected under this paragraph shall not contain two directors from the same district serving the same term.

89 Acts, ch 198, §4 HF 734  
NEW unnumbered paragraph 2

### 185C.8 Elections.

The board shall administer elections for directors of the board with the assistance of the secretary. Prior to the expiration of a director's term of office, the board shall appoint a nominating committee for the district represented by that director. The nominating committee shall consist of five producers who are residents of the district from which a director must be elected. The nominating committee shall nominate two resident producers as candidates for each director position for which an election is to be held. Additional candidates may be nominated by a written petition of twenty-five producers. Procedures governing the time and place of filing shall be adopted and publicized by the board.

Following recommencement of the promotional order, or termination of the promotional order's suspension as provided in section 185C.24, the secretary shall order the reconstitution of the board. An election of directors shall be held within thirty days from the date of the order. The secretary shall call for, provide for notice of, conduct, and certify the results of the election in a manner consistent with section 185C.5 through 185C.7. Directors shall serve terms as provided in section 185C.7. Rules or procedures adopted by the board and in effect at the date of suspension shall continue in effect upon reconstitution of the board. The Iowa corn growers association may nominate two resident producers as candidates for each director position. Additional candidates may be nominated by a written petition of at least twenty-five producers.

89 Acts, ch 198, §5 HF 734  
NEW unnumbered paragraph 2

### 185C.13 Powers and duties.

The board may:

1. Employ and discharge assistants and professional counsel as necessary, prescribe their duties and powers, and fix their compensation.
2. Establish offices, incur expenses, and enter into any contracts or agreements necessary to carry out the purposes of this chapter.
3. Adopt, rescind, and amend all proper and necessary rules for the exercise of its powers and duties.
4. Enter into arrangements for collection of the assessment on corn marketed in this state.

5. To the extent provided by federal law, be responsible for collection of receipts from the federal assessment, and for expenditure of proceeds from the federal assessment.

89 Acts, ch 198, §6 HF 734  
NEW subsection 5

### **185C.15 Term of promotional order—automatic extension.**

A promotional order shall be effective for four years from its effective date. Upon the date that an order is due to expire the order shall automatically be extended for an additional four years from the date that the order or last extension would otherwise expire, except as provided in section 185C.24.

89 Acts, ch 198, §7 HF 734  
Section amended

### **185C.16 Notice of referendum.**

Notice of a referendum election to initiate or terminate a promotional order shall be given by publication in a newspaper of general circulation in this state at least ten days prior to the date of the referendum and in any other reasonable manner as may be determined by the secretary for the initial referendum and by the board for extension\* of the promotional order.

89 Acts, ch 198, §8 HF 734  
\*“Termination” probably intended; corrective legislation is pending  
Section amended

### **185C.21 State assessment.**

1. The board shall set the state assessment rate. State assessments collected pursuant to the promotional order shall be paid into the corn promotion fund established in section 185C.26. Except as provided in subsection 2, a state assessment shall not exceed one-quarter of one cent per bushel upon corn marketed in this state. The rate of the state assessment shall be determined by the board but shall not be changed, once established, during a marketing year. However, a board which has been reconstituted pursuant to section 185C.8 may change the rate of the state assessment in the marketing year in which the board is reconstituted.

2. Upon request of the board, the secretary shall call a special referendum for producers to vote on whether to authorize an increase in the state assessment above one-quarter of one cent per bushel, notwithstanding subsection 1. The special referendum shall be conducted as provided in this chapter for referendum elections. However, the special referendum shall not affect the existence or length of the promotional order in effect. If a majority of the producers voting in the special referendum approve the increase, the board, at the end of the marketing year, may increase the assessment to the amount approved in the special referendum. However a state assessment shall not exceed one-half of one cent per bushel of corn marketed in this state.

89 Acts, ch 198, §9 HF 734  
Section amended

### **185C.22 State assessment on purchase invoice.**

After a promotional order has been issued, the first purchaser at the time of payment for corn shall show the total amount of state assessment deducted from the sale on the purchase invoice.

89 Acts, ch 198, §10 HF 734  
Section amended

**185C.23 Deduction of state assessment.**

The state assessment shall be deducted from the purchase price of corn at the time of sale, and forwarded to the board by the first purchaser in the manner and at intervals determined by the board.

89 Acts, ch 198, §11 HF 734  
Section amended

**185C.24 Cancellation and suspension.**

1. The board shall be suspended and board operations and terms of members shall cease upon either of the following events:

- a. The state assessment is terminated pursuant to section 185C.25.
- b. The state assessment is suspended pursuant to section 185C.25A.

2. However, notwithstanding subsection 1, the board shall continue to operate until proceeds remaining in the corn promotion fund are disbursed. Disbursement shall be made as provided for payment of moneys under section 185C.26.

3. The secretary shall order that the board be reconstituted upon either of the following events:

- a. Recommencement of the promotional order, pursuant to section 185C.25.
- b. Termination of the promotional order's suspension, pursuant to section 185C.25A.

4. Until the board is reconstituted under section 185C.8, the secretary has the powers to perform the duties of the board as provided in this chapter, including the collection of the state assessment at the rate in effect on the date when collection of the state assessment was terminated pursuant to section 185C.25. However, the secretary shall not expend funds from state assessment.

89 Acts, ch 198, §12 HF 734  
Section stricken and rewritten

**185C.25 Effective period of promotional order—termination.**

1. A state assessment adopted upon the initiation of a promotional order shall be collected during the effective period of the order, and shall have no effect upon termination of the promotional order. Upon adoption or extension of the promotional order, the order shall be effective for the period described in section 185C.15 unless the order is terminated as provided in this section or suspended as provided in section 185C.25A.

2. The secretary shall call a referendum to terminate the promotional order if all the following conditions are met:

a. The secretary receives a petition signed by at least five percent of the state's producers reported in the most recent United States census of agriculture.

b. The petition is signed by at least five percent of the state's producers residing in each of five districts according to the most recent United States census of agriculture.

c. The secretary receives the petition not less than one hundred fifty days from the date that the order is due to expire, but receives the petition not more than two hundred forty days before the date that the order is due to expire.

3. The secretary shall conduct the election as provided for a referendum under this chapter, including sections 185C.16 through 185C.20. If upon counting and tabulating the ballots, the secretary determines that a majority of voting producers favor termination of the state assessment, the secretary, in cooperation with the board, shall terminate the state assessment in an orderly manner as soon as practicable.

4. If the assessment is terminated, another referendum shall not be held for at least one hundred eighty days from the date that the assessment is terminated. A succeeding referendum to restore the assessment shall be called by the secretary upon petition of at least five hundred producers requesting a referendum. The petitioners shall guarantee the costs of the succeeding referendum. The secretary

shall conduct the election as provided for a referendum under this chapter not later than one hundred fifty days after the secretary receives the petition. If a referendum held pursuant to this subsection is approved by producers, the promotional order shall commence no later than two hundred ten days following the date that the petition is received by the secretary.

89 Acts, ch 198, §13 HF 734  
Section amended

#### **185C.25A Collection of federal assessment.**

Prior to the collection of the federal assessment, the board may approve the continued collection of the state assessment during the collection of the federal assessment. If the collection of the state assessment would be in addition to, and not an offset against, the collection of the federal assessment, the board shall suspend the collection of the state assessment. On the date of the termination or suspension of the federal assessment, the promotional order shall recommence and the suspension of the state assessment shall terminate.

89 Acts, ch 198, §14 HF 734  
NEW section

#### **185C.26 Deposit of moneys.**

State assessments collected by the board from a sale of corn shall be deposited in the office of the treasurer of state together with any gifts, or any federal or state grant as may be received by the board, and placed in a special fund to be known as the corn promotion fund. Moneys collected shall be subject to audit by the auditor of state. From moneys collected, the board shall first pay all the direct and indirect costs incurred by the secretary and the costs of referendums, elections, and other expenses incurred in the administration of this chapter, and thereafter moneys may be expended for the purpose of market development. The fund shall be subject at all times to warrants by the director of revenue and finance, drawn upon the written requisition of the chairperson of the board and attested to by the secretary of the board.

89 Acts, ch 198, §15 HF 734  
Section amended

#### **185C.27 Refund of assessment.**

A producer who has sold corn and had a state assessment deducted from the sale price, by application in writing to the board, may secure a refund in the amount deducted. The refund shall be payable only when the application shall have been made to the board within sixty days after the deduction. Application forms shall be given by the board to each first purchaser when requested and the first purchaser shall make the applications available to any producer. Each application for refund by a producer shall have attached to the application proof of the assessment deducted. The proof of assessment may be in the form of a duplicate or certified copy of the purchase invoice by the first purchaser. The board shall have thirty days from the date the application for refund is received to remit the refund to the producer. The board may provide for refunds of a federal assessment as provided by federal law. Unless inconsistent with federal law, refunds shall be made under section 185C.26.

89 Acts, ch 198, §16 HF 734  
Section amended

#### **185C.28 Appropriation.**

Moneys deposited in the corn promotion fund, including federal moneys to the extent permitted by federal law, are appropriated for the administration of this chapter and for the payment of claims based upon obligations incurred in the performance of activities and functions set forth in this chapter.

89 Acts, ch 198, §17 HF 734  
Section amended

**185C.29 Remission of excess funds.**

After the costs of elections, referendum, necessary board expenses, and administrative costs have been paid, at least seventy-five percent of the remaining funds from state assessments in the corn promotion fund shall be allocated to organizations selected by the corn promotion board on the basis of their ability to carry out the purposes of this chapter. The funds can only be used for research, promotion, and education in co-operation with agencies equipped to perform these activities.

The Iowa corn promotion board shall not expend any funds on political activity, and it shall be a condition of any allocation of funds that any organization receiving funds shall not expend the funds on political activity or on any attempt to influence legislation.

89 Acts, ch 198, §18 HF 734  
Section amended

**185C.32 First purchaser information.**

Every first purchaser shall upon request furnish the secretary with such information as is necessary to enable the secretary and the board to carry out the provisions of this chapter. Such information shall be provided as prescribed by the secretary. The secretary may examine any records relating to the purchase or the state assessment of corn by any first purchaser. The secretary may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas as may be necessary for the proper administration of this chapter. When requested by the board, the secretary shall employ these powers in the manner requested.

89 Acts, ch 198, §19 HF 734  
Section amended

**185C.33 Annual report.**

The board shall make an annual report, containing a financial statement, to the secretary and the chairpersons of the committees on agriculture of the senate and house of representatives, on or before December 1 of each year, showing all income and expenses, including board expenses, and other relevant information concerning assessments collected and expended under this chapter.

89 Acts, ch 198, §20 HF 734  
Section amended

**CHAPTER 189****GENERAL PROVISIONS****189.2 Duties.**

The department shall:

1. Execute and enforce this title, except chapters 203B, 204, 204A and 205.
2. Make and publish all necessary rules, not inconsistent with law, for enforcing the provisions of this title.
3. Provide such educational measures and exhibits, and conduct such educational campaigns as are deemed advisable in fostering and promoting the production and sale of the articles dealt with in this title in accordance with the regulations herein prescribed.
4. Issue from time to time, bulletins showing the results of inspections, analyses, and prosecutions under this title. These bulletins shall be printed in such numbers as may be approved by the superintendent of printing and shall be distributed to the newspapers of the state and to all interested persons.

89 Acts, ch 197, §25 HF 343  
Subsection 1 amended

**189.14 Mislabeled articles.**

1. No person shall knowingly introduce into this state, solicit orders for, deliver, transport, or have in possession with intent to sell, any article which is labeled in any other manner than that prescribed by this title for the label of said article when offered or exposed for sale, or sold in package or wrapped form in this state.

2. No person shall package any liquid or semisolid product or label any such product as honey, imitation honey or honey blend, or use the word "honey" in any prominent location on the label of such product or sell or offer for sale any such product which is labeled as honey, imitation honey or honey blend or which contains a label with the word "honey" prominently displayed thereon, unless the entire product is honey as defined in section 190.1, subsection 67.

3. A person shall not package a liquid or semisolid product, or label the product, as sorghum, imitation sorghum, or sorghum blend, or use the word "*sorghum*" in a prominent location on the label of the product or sell or offer for sale a product labeled as sorghum, imitation sorghum, or sorghum blend or which contains a label with the word "*sorghum*" prominently displayed, unless the product label states that the product is sorghum syrup as defined in section 190.1, imitation sorghum, or a sorghum blend. As used in this subsection, "*imitation sorghum*" means a product that has the flavor of sorghum but contains no sorghum syrup as defined in section 190.1. "*Sorghum blend*" means a product that is not entirely sorghum syrup as defined in section 190.1.

89 Acts, ch 151, §1 HF 650  
NEW subsection 3

**CHAPTER 190****ADULTERATION OF FOODS****190.1 Definitions and standards.**

For the purpose of this title, except chapter 192, the following definitions and standards of food are established:

1. *Butter*. Butter is the clean, nonrancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass, with or without the addition of salt, or harmless coloring matter, and containing at least eighty percent, by weight, of milk fat.

2. *Oleomargarine*. Oleo, oleomargarine or margarine includes all substances, mixtures and compounds known as oleo, oleomargarine or margarine, or all substances, mixtures and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter.

3. *Renovated butter*. Renovated butter is butter produced by taking original packing stock butter, or other butter, or both, and melting the same so that the milk fat can be extracted, then by mixing the said milk fat with skimmed milk, milk, cream, or some milk product, and rechurning or reworking the said mixture; or butter made by any method which produces a product commonly known as boiled, processed, or renovated butter.

4. *Cheeses and cheese products*. The specifications and standards for cheeses and cheese products, cottage cheese dry curd, cottage cheese, and low fat cottage cheese shall be as provided by the definitions and standards contained in federal food and drug standards under the Code of Federal Regulations, part 133 of Title 21, as amended to April 1, 1977.

5. *Imitation cheese*. Imitation cheese is a product containing any substance other than that produced from milk or cream, as provided in subsection 4 above, and made in the appearance of or designed to be used for any of the purposes for which cheese produced from milk or cream is used.

6. *Cream.*

a. Cream is the sweet, fatty liquid separated from milk, with or without the addition of milk or skim milk, which contains not less than eighteen percent milk fat.

b. Light cream, coffee cream, or table cream is cream which contains not less than eighteen percent but less than thirty percent milk fat.

c. Whipping cream is cream which contains not less than thirty percent milk fat.

d. Light whipping cream is cream that contains not less than thirty percent but less than thirty-six percent milk fat.

e. Heavy cream or heavy whipping cream is cream which contains not less than thirty-six percent milk fat.

f. Whipped cream is whipping cream into which air or gas has been incorporated.

g. Whipped light cream, coffee cream, or table cream is light cream, coffee cream, or table cream into which air or gas has been incorporated.

h. Sour cream or cultured sour cream is a fluid or semifluid cream resulting from the souring, by lactic acid producing bacteria or similar culture, of pasteurized cream, which contains not less than one-fifth of one percent acidity expressed as lactic acid.

7. *Flavoring extract.* A flavoring extract is a solution in ethyl alcohol or other suitable medium of the sapid and odorous principles derived from an aromatic plant, or parts of the plant, with or without its coloring matter, and conforms in name to the plant used in its preparation.

8. *Almond extract.* Almond extract is the flavoring extract prepared from oil of bitter almonds, free from hydrocyanic acid, and contains not less than one percent by volume of oil of bitter almonds.

9. *Anise extract.* Anise extract is the flavoring extract prepared from oil of anise, and contains not less than three percent by volume of oil of anise.

10. *Cassia extract.* Cassia extract is the flavoring extract prepared from oil of cassia, and contains not less than two percent by volume of oil of cassia.

11. *Celery seed extract.* Celery seed extract is the flavoring extract prepared from celery seed or the oil of celery seed, or both, and contains not less than three-tenths percent by volume of oil of celery seed.

12. *Cinnamon extract.* Cinnamon extract is the flavoring extract prepared from oil of cinnamon, and contains not less than two percent by volume of oil of cinnamon.

13. *Clove extract.* Clove extract is the flavoring extract prepared from oil of cloves, and contains not less than two percent by volume of oil of cloves.

14. *Ginger extract.* Ginger extract is the flavoring extract prepared from ginger, and contains in each one hundred cubic centimeters the alcohol-soluble matters from not less than twenty grams of ginger.

15. *Lemon extract.* Lemon extract is the flavoring extract prepared from oil of lemon, or from lemon peel, or both, and contains not less than five percent by volume of oil of lemon.

16. *Terpeneless extract of lemon.* Terpeneless extract of lemon is the flavoring extract prepared by shaking oil of lemon with dilute alcohol, or other suitable medium, or by dissolving terpeneless oil of lemon in such medium, and contains not less than two-tenths percent by weight of citral derived from oil of lemon.

17. *Nutmeg extract.* Nutmeg extract is the flavoring extract prepared from oil of nutmeg, and contains not less than two percent by volume of oil of nutmeg.

18. *Orange extract.* Orange extract is the flavoring extract prepared from oil of orange, or from orange peel, or both, and contains not less than five percent by volume of oil of orange.

19. *Terpeneless extract of orange.* Terpeneless extract of orange is the flavoring extract prepared by shaking oil of orange with dilute alcohol, or other suitable medium, or by dissolving terpeneless oil of orange in such medium, and corresponds in flavoring strength to orange extract.

20. *Peppermint extract.* Peppermint extract is the flavoring extract prepared from oil of peppermint, or from peppermint, or both, and contains not less than three percent by volume of oil of peppermint.

21. *Rose extract.* Rose extract is the flavoring extract prepared from attar of roses, with or without red rose petals, and contains not less than four-tenths percent by volume of attar of roses.

22. *Savory extract.* Savory extract is the flavoring extract prepared from oil of savory, or from savory, or both, and contains not less than thirty-five hundredths percent by volume of oil of savory.

23. *Spearmint extract.* Spearmint extract is the flavoring extract prepared from oil of spearmint, or from spearmint, or both, and contains not less than three percent by volume of oil of spearmint.

24. *Star anise extract.* Star anise extract is the flavoring extract prepared from oil of star anise, and contains not less than three percent by volume of oil of star anise.

25. *Sweet basil extract.* Sweet basil extract is the flavoring extract prepared from oil of sweet basil, or from sweet basil, or both, and contains not less than one-tenth percent by volume of oil of sweet basil.

26. *Sweet marjoram extract.* Sweet marjoram extract is the flavoring extract prepared from the oil of marjoram, or from marjoram, or both, and contains not less than one percent by volume of oil of marjoram.

27. *Thyme extract.* Thyme extract is the flavoring extract prepared from oil of thyme, or from thyme, or both, and contains not less than two-tenths percent by volume of oil of thyme.

28. *Tonka extract.* Tonka extract is the flavoring extract prepared from tonka bean, with or without sugar or glycerin, and contains not less than one-tenth percent by weight of coumarin extracted from the tonka bean, together with a corresponding proportion of the other soluble matters thereof.

29. *Vanilla extract.* Vanilla extract is the flavoring extract prepared from vanilla bean, with or without sugar or glycerin, and contains in one hundred cubic centimeters the soluble matters from not less than ten grams of the vanilla bean, and contains not less than thirty percent by volume of absolute ethyl alcohol, or other suitable medium.

30. *Wintergreen extract.* Wintergreen extract is the flavoring extract prepared from oil of wintergreen, and contains not less than three percent by volume of oil of wintergreen.

31. *Food.* Food shall include any article used by humans or domestic animals for food, drink, confectionery, or condiment, or which enters into the composition of the same, whether simple, blended, mixed, or compound. The term "blended" shall be construed to mean a mixture of like substances.

32. *Ice cream mix.* Ice cream mix is a pure clean product made from a combination of milk products and one or more of the following: Sugar, dextrose and glucose; and may contain one or more of the following ingredients: Eggs, egg products, harmless coloring, salt and wholesome stabilizer.

It may not contain more than one-half of one percent by weight of stabilizer. It may contain not less than ten percent by weight of milk fat nor less than twenty percent by weight of total milk solids. The acidity and the salt balance of the ice cream may be standardized by the use of a harmless alkali, an amount not to exceed one-half of one percent calculated as lactic acid. In no case shall the bacteria count of ice cream mix exceed one hundred thousand to the cubic centimeter.

33. *Ice cream.* Ice cream is a pure clean frozen product made from ice cream mix and a harmless flavoring. It shall contain not less than ten percent by weight of milk fat and not less than twenty percent by weight of total milk solids, except where fruit, fruit juice, or both fruit and fruit juice, nuts, cocoa or chocolate, or cocoa and chocolate syrup, maple syrup, cakes or confections are used for the purpose of flavoring; then it shall contain not less than eight percent by weight of milk fat and not less than sixteen percent by weight of total milk solids.

In no case shall any ice cream contain less than one and six-tenths pounds of total food solids per gallon nor shall the bacteria count exceed fifty thousand to the cubic centimeter.

A quart of ice cream in factory filled packages shall weigh not less than eighteen ounces.

34. *Flavored ice cream.*

a. Fruit ice cream is ice cream flavored exclusively with fruit and shall be labeled "Fruit Ice Cream" preceded by the name of the fruit.

b. Fruit flavored ice cream is ice cream flavored with fruit and fruit juice, or with fruit juice, and shall be labeled "Ice Cream" preceded by the name of the fruit.

c. Nut ice cream is ice cream flavored exclusively with nut meats and shall be labeled "Nut Ice Cream" preceded by the name of the nut used.

d. Nut flavored ice cream is ice cream flavored with a combination of nut meats and one or both of the following: Juice of nut meats or true nut extract and shall be labeled "Ice Cream" preceded by the name of the nut.

e. Any ice cream bearing the name of a fruit or nut flavor but flavored with artificial flavor shall be labeled "Ice Cream" preceded by the name of the fruit or nut and followed by the words "artificially flavored," in the same size type. Such ice cream shall contain not less than ten percent by weight of total milk fat and not less than twenty percent by weight of total milk solids.

f. Any ice cream flavored with confections, cakes, bread or pastry products, cereals or vegetables, the ice cream shall be labeled "Ice Cream" preceded by the name of the product imparting the flavor.

g. Frozen custard, French ice cream, French custard ice cream is a frozen product which shall contain not less than five dozen clean wholesome egg yolks, or one and five-tenths pounds of wholesome dry egg yolks or three pounds wholesome frozen egg yolks for each ninety pounds of the product and shall conform in all other respects to the definition and standard of identity of ice cream prescribed previously.

35. *Ice milk.* Ice milk is a pure, clean frozen or semifrozen product made from a combination of milk products and one or more of the following ingredients: Sugar, dextrose, glucose, corn syrup in liquid or dry form, with harmless flavoring or coloring or both, either natural or artificial, and with or without wholesome stabilizer; and in the manufacture of which freezing has been accompanied by agitation of the ingredients. It contains not more than one-half of one percent by weight of wholesome stabilizer, and shall contain not less than two percent and not more than seven percent by weight of milk fat; and not less than eleven percent by weight of total milk solids. In no case shall any ice milk contain less than one and three-tenths pounds of total food solids per gallon or weigh less than four and five-tenths pounds per gallon. It shall not contain fats other than milk fat. Every particle of mix shall be pasteurized at temperature of not less than 155° F. for not less than thirty minutes or to a temperature of not less than 175° F. for not less than twenty-five seconds in approved and properly operated equipment. Provided, that nothing contained in this definition shall be construed as barring any other process which has been demonstrated to be equally efficient and is approved by the department. It shall contain not more than fifty thousand bacteria per cubic centimeter in the manufacturer's package.

Ice milk sold at retail in the manufacturer's package or wrapper shall be labeled on a contrasting background in plain legible eight-point type with the words, "Ice Milk", provided that: When flavored exclusively with fruit it shall be labeled, "Fruit Ice Milk", preceded by the name of the fruit. When flavored with fruit and fruit juice, or with fruit juice, it shall be labeled, "Ice Milk", preceded by the name of the fruit. When bearing the name of a fruit or nut flavor but flavored with artificial flavor, it shall be labeled, "Ice Milk", preceded by the name of the nut or fruit and followed by the words "artificially flavored" in the same size type. When flavored with cocoa or chocolate, or cocoa and chocolate syrup, maple syrup, or confections, it shall be labeled, "Ice Milk", preceded by the name of the product imparting the flavor.

A sign shall be posted in every retail establishment where ice milk is sold, on a white card not less than twelve by twenty-two inches in dimensions with letters not less than three inches in height and two inches in width containing the words, "Ice Milk Sold Here"; such a sign shall at all times be within plain view of, and at an easily readable distance from the customer.

36. *Milk sherbet.*

a. Milk sherbet is the pure clean frozen product made from a combination of milk products and one or more of the following ingredients: Sugar, sucrose, dextrose, harmless coloring and stabilizer composed of wholesome edible material, flavoring derived from fruit, fruit juice and lactic, citric, or tartaric acid and with not less than thirty-five hundredths of one percent of acid as determined by titrating with standard alkali and expressed as lactic acid.

It shall contain not less than two percent and not more than five percent by weight of milk solids and the milk fat content thereof shall be not less than one percent and not more than two percent. It shall be identified by its common or usual flavor name.

b. Ices or fruit ices shall conform in all respects to the definition and standard of identity for milk sherbet, except that it shall contain no milk solids.

37. *Frozen malted milk.* "Frozen malted milk" means the pure, clean, frozen or semifrozen product made from the combination of milk products, malted milk and one or more of the following ingredients: Eggs, sugar, dextrose, and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer; and in the manufacture of which freezing has been accompanied by agitation of the ingredients. It contains not more than one-half of one percent by weight of edible gelatin or vegetable stabilizer, not less than seven percent by weight of milk fat, not less than fourteen percent by weight of total milk solids, and not less than three percent by weight of malted milk. In no case shall frozen malted milk contain less than one and three-tenths pounds of total food solids per gallon or weigh less than four and one-half pounds per gallon.

Provided, however, products complying with the above definition except that they contain less than seven percent by weight of milk fat, shall be sold only in the manufacturer's original package or wrapper and must be labeled in plain legible eight-point type with the words "Imitation Frozen Malted Milk."

38. *Milk.* Milk is hereby defined to be the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, which contains not less than eight and one-fourth percent milk solids-not-fat and not less than three and one-fourth percent milk fat. (Milk fat or butterfat is the fat of milk.)

39. *Skim milk or skimmed milk.* Skim milk or skimmed milk is milk from which sufficient milk fat has been removed to reduce its milk fat content to less than one-half of one percent.

40. *Goat milk.* Goat milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of healthy goats. The word "milk" shall be interpreted to include goat milk.

41. *Half-and-half*. Half-and-half is a product consisting of a mixture of milk and cream which contains not less than ten and one-half percent milk fat.

42. *Cultured half-and-half*. Sour half-and-half or cultured half-and-half is fluid or semifluid half-and-half derived from the souring, by lactic acid producing bacteria or similar culture, of pasteurized half-and-half, which contains not less than one-fifth of one percent acidity expressed as lactic acid.

43. *Reconstituted milk*. Reconstituted or recombined milk or milk products shall mean milk or milk products defined in this section which result from the recombining of milk constituents with potable water.

44. *Concentrated milk*. Concentrated milk is a fluid product, unsterilized and unsweetened, resulting from the removal of a considerable portion of the water from milk, which, when combined with potable water, results in a product conforming with the standards for milk fat and solids-not-fat of milk.

45. *Concentrated milk products*. Concentrated milk products shall mean and include homogenized concentrated milk, vitamin "D" concentrated milk, concentrated skim milk, fortified concentrated skim milk, concentrated low fat milk, fortified concentrated low fat milk, concentrated flavored milk, concentrated flavored milk products, and similar concentrated products made from concentrated milk or concentrated skim milk, and which, when combined with potable water in accordance with instructions printed on the container, conform with the definitions of the corresponding milk products in this chapter and chapters 191 and 192.

46. *Low fat milk*. Low fat milk is milk from which a sufficient portion of milk fat has been removed to reduce its milk fat content to not less than one-half of one percent and not more than two percent.

47. *Vitamin "D" milk*. Vitamin "D" milk and milk products are milk and milk products, the vitamin "D" content of which has been increased by an approved method to at least four hundred U.S.P. units per quart.

48. *Fortified milk*. Fortified milk and milk products are milk and milk products other than vitamin "D" milk and milk products, the vitamin or mineral content of which has been increased by a method and in an amount approved by the secretary.

49. *Homogenized milk*. Homogenized milk is milk which has been treated to insure breakup of the fat globules to such an extent that, after forty-eight hours of quiescent storage at 45° F., no visible cream separation occurs on the milk, and the fat percentage of the top one hundred milliliters of milk in a quart, or of proportionate volumes in containers of other sizes, does not differ by more than ten percent from the fat percentage of the remaining milk as determined after thorough mixing. The word "milk" shall be interpreted to include homogenized milk.

50. *Flavored milk*. Flavored milk or milk products shall mean milk and milk products as defined in this chapter and chapters 191 and 192 to which has been added a flavor or sweetener or both.

51. *Buttermilk*. Buttermilk is a fluid product containing not less than eight and one-fourth percent of milk solids-not-fat and resulting from the manufacture of butter from milk or cream.

52. *Cultured buttermilk*. Cultured buttermilk is a fluid product resulting from the souring, by lactic acid producing bacteria or similar culture, of pasteurized skim milk or pasteurized low fat milk.

53. *Cultured milk*. Cultured milk or cultured whole milk buttermilk is a fluid product resulting from the souring, by lactic acid producing bacteria or similar culture, of pasteurized milk.

54. *Acidified milk*. Acidified milk and milk products are milk and milk products obtained by the addition of food grade acids to pasteurized cream,

half-and-half, milk, low fat milk, or skim milk, resulting in a product acidity of not less than one-fifth of one percent expressed as lactic acid.

55. *Milk products.* Milk products include cream, light cream, coffee cream, table cream, whipping cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, whipped coffee cream, whipped table cream, sour cream, cultured sour cream, half-and-half, sour half-and-half, cultured half-and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, skim milk, skimmed milk, low fat milk, fortified milk and milk products, vitamin "D" milk and milk products, homogenized milk, flavored milk or milk products, buttermilk, cultured buttermilk, cultured milk, cultured whole milk buttermilk, and acidified milk and milk products.

This definition is not intended to include such products as sterilized milk and milk products hermetically sealed in a container and so processed, either before or after sealing, as to prevent microbial spoilage, or evaporated milk, condensed milk, ice cream and other frozen desserts, butter, dry milk products, except as defined herein, cottage cheese dry curd, cottage cheese, low fat cottage cheese, cheese or cheese products except when they are combined with other substances to produce any pasteurized milk or milk product defined herein.

56. *Grade "A" dry milk.* Grade "A" dry milk products are milk products which have been produced for use in grade "A" pasteurized milk products and which have been manufactured under the provisions of Grade "A" Dry Milk Products—Recommended Sanitation Ordinance and Code for Dry Milk Products Used in Grade "A" Pasteurized Milk Products (1959) of the United States Public Health Service.

57. *Optional ingredients.* Optional ingredients shall mean and include grade "A" dry milk products, concentrated milk, concentrated milk products, flavors, sweeteners, stabilizers, emulsifiers, acidifiers, vitamins, minerals, and similar ingredients.

58. *Oysters.* Oysters shall not contain ice, nor more than sixteen and two-thirds percent by weight of free liquid.

59. *Vinegar.* Vinegar is the product made by the alcoholic and subsequent fermentation of fruits, grain, vegetables, sugar, or syrups without the addition of any other substance and containing an acidity of not less than four percent by weight of absolute acetic acid. The product may be distilled, but when not distilled it shall not carry in solution any other substance except the extractive matter derived from the substances from which it was made.

60. *Cider or apple vinegar.* Cider or apple vinegar is a similar product made by the same process solely from the juice of apples. Such vinegar which during the course of manufacture has developed in excess of four percent acetic acid may be reduced to said strength.

61. *Corn sugar vinegar.* Corn sugar vinegar is a similar product made by the same process solely from solutions of starch sugar.

62. *Malt vinegar.* Malt vinegar is a similar product made by the same process solely from barley malt or cereals whose starch has been converted by malt.

63. *Sugar vinegar.* Sugar vinegar is a similar product made by the same process solely from sucrose.

64. *Lard.* Lard is the fat rendered from fresh, clean, sound, fatty tissues from hogs in good health at the time of slaughter, with or without lard stearin or a hardened lard. The tissues do not include bones, detached skin, head fat, ears, tails, organs, windpipes, large blood vessels, scrap fat, skimmings, settlings, pressings and the like and are reasonably free from muscle tissue and blood.

65. *Rendered pork fat.* Rendered pork fat is the fat other than lard, rendered from clean, sound carcasses, parts of carcasses, or edible organs from hogs in good health at the time of slaughter, except that stomachs, tails, bones from the head

and bones from cured or cooked pork are not included. The tissues rendered are usually fresh, but may be cured, cooked, or otherwise prepared and may contain some meat food products. Rendered pork fat may be hardened by the use of lard stearin or hardened lard or rendered pork fat stearin or hardened rendered pork fat or any combination.

66. *Substitute for sugar.* Where sugar is given as one of the ingredients in a food product when the definition is established by law or by regulation, the following products may be used as optional ingredients: Dextrose (corn sugar) or corn syrup.

67. *Honey.* Honey is the secretion of floral nectar collected by the honeybee and stored in wax combs constructed by the honeybee, or the liquid derived therefrom.

68. *Sorghum syrup.* Sorghum syrup is liquid food derived by the concentration and heat treatment of the juice of sorghum cane including sorgo and sorghum vulgare. Sorghum syrup must contain not less than seventy-four percent by weight of soluble solids derived solely from juices of sorghum cane.

89 Acts, ch 151, §2 HF 650  
Subsection 68 amended

## CHAPTER 190B

### ORGANIC FOOD

#### 190B.8 Penalties.

A person who acts in violation of this chapter shall be subject to one or more of the following:

1. A civil penalty of not more than five hundred dollars may be imposed on a producer who sells a food product advertised as organic, organically produced, or by using a derivative of the term organic, and does not provide a sworn statement, as required by section 190B.4, or provides a sworn statement that is fraudulent. A civil penalty of not more than five hundred dollars may be imposed on a vendor who purchases a food product advertised by a producer as organic, organically produced, or by using a derivative of the term organic, without obtaining a sworn statement, as required by section 190B.4, or who obtains a sworn statement that the vendor knows or has reason to know is false.

2. A civil penalty of not more than five hundred dollars may be imposed on a producer, processor, or vendor who fails to maintain accurate records required under section 190B.3.

3. A civil penalty of not more than five hundred dollars may be imposed on a vendor who sells a food product advertised by the vendor as organic, organically produced, or by using a derivative of the term organic, knowing that the product does not satisfy the standards of section 190B.2.

4. A civil penalty of not more than five hundred dollars may be imposed on a vendor who sells a food product advertised by the vendor as organic, organically produced, or by using a derivative of the term organic if the vendor fails to mark the food product or a receptacle containing food products in accordance with the requirements of section 190B.6.

5. A civil penalty of not more than five hundred dollars may be imposed on a person who labels a food product or a receptacle containing a food product as "certified" or "verified" contrary to section 190B.5.

89 Acts, ch 83, §32 SF 112  
Subsection 1 amended

## CHAPTER 192A

### MARKETING OF DAIRY PRODUCTS

#### 192A.30 Permit fees.

For the purpose of administering and enforcing this chapter, a processor or a person purchasing milk products from a processor for wholesale distribution shall obtain a permit, as provided by departmental rule, before milk products are sold by the person or wholesale purchaser in this state. The processor or wholesale purchaser shall pay to the secretary a permit fee in an amount set by the secretary, not to exceed five mills per hundredweight on milk processed into dairy products as defined in section 192A.1, and sold within the state of Iowa. However, the permit fee for the sale of ice cream or an additive variant of ice cream or nonmilk-fat imitation shall not exceed three mills per gallon. Products upon which fees have been paid are exempt from further fees in successive transactions. The fees for each month thus computed shall be paid to the secretary on or before the twenty-fifth day of the following month.

89 Acts, ch 45, §1 SF 317  
Section amended

## CHAPTER 196A

### EXCISE TAX ON EGG SALES

#### 196A.18 Refunds.

A producer who has paid a nonrefundable promotion import tax in another state on eggs produced in Iowa may, by application in writing to the council, secure a refund in the amount of the import tax paid which does not exceed the amount of tax paid under this chapter. The refund shall be payable only when the application shall have been made to the council within sixty days after the end of the calendar quarter during which the eggs were sold by the producer. Each application for refund by a producer shall have attached to it proof of the import tax paid and the tax paid under this chapter. The proof of tax paid may be in the form of a duplicate or certified copy of the purchase invoice by the purchaser.

89 Acts, ch 137, §2 SF 386  
Section amended

#### 196A.19 Use of egg fund.

All moneys deposited in the Iowa egg fund are appropriated for the administration of this chapter and for the payment of claims based upon obligations incurred in the performance of activities and functions set forth in this chapter.

Moneys collected under the authority of this chapter are subject to audit by the auditor of state. The moneys shall be used by the Iowa egg council first for the payment of collection expenses, second for payment of the costs and expenses arising in connection with conducting referendums, and third for market development. Moneys remaining in the Iowa egg fund after a referendum is held when a majority of the voters do not favor extending the tax shall continue to be expended in accordance with this chapter until exhausted.

89 Acts, ch 137, §3 SF 386  
Unnumbered paragraph 2 amended

## CHAPTER 203

### ADULTERATION AND LABELING OF DRUGS

## CHAPTER 203A

## IOWA DRUG AND COSMETIC ACT

Sections 203A.1 through 203A.20 repealed by 89 Acts, ch 197, §31.

See chapter 203B, HF 343

Section 203A.21 in Code 1989 transferred in Code Supplement 1989 to §203B.25;  
89 Acts, ch 197, §32 HF 343

## CHAPTER 203B

## IOWA DRUG, DEVICE, AND COSMETIC ACT

**203B.1 Title.**

This chapter may be cited as the "*Iowa Drug, Device, and Cosmetic Act*".

89 Acts, ch 197, §1 HF 343

NEW section

**203B.2 Definitions—applicability.**

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

1. "*Advertising*" means any representation disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of drugs, devices, or cosmetics.

2. "*Board*" means the board of pharmacy examiners.

3. "*Contaminated with filth*" means not securely protected from dust, dirt, and as far as is necessary by all reasonable means, from all foreign or injurious contaminations.

4. "*Cosmetic*" means any of the following, but does not include soap:

a. An article intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part of a human body for cleaning, beautifying, promoting attractiveness, or altering the appearance.

b. An article intended for use as a component of an article defined in paragraph "a".

5. "*Counterfeit drug*" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any such likeness, of a drug manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed, or distributed the drug and which falsely purports or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer, or distributor.

6. "*Device*" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory of any of these, which is any of the following:

a. Recognized as a device in the official United States Pharmacopoeia National Formulary or any supplement to it.

b. Intended for use in the diagnosis of diseases or other conditions, or in the cure, mitigation, treatment, or prevention of diseases or other conditions in a human.

c. Intended to affect the structure or any function of the body of a human, and which does not achieve any of its principal intended purposes through chemical action within or on the body of a human and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

7. "*Drug*" means any of the following, but does not include a device:

a. An article recognized as a drug in the official United States Pharmacopoeia National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to either document.

b. An article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in a human.

c. An article, other than food, intended to affect the structure or any function of the body of a human.

d. An article intended for use as a component of any articles specified in paragraphs "a", "b", or "c".

8. "Federal Act" means the federal Food, Drug, and Cosmetic Act, which is codified in 21 U.S.C. §301 et seq.

9. "Immediate container" does not include a package liner.

10. "Label" means a display of written, printed, or graphic matter upon the immediate container of an article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label is not complied with unless the word, statement, or other information also appears on the outside container or wrapper of the retail package of the article, or is easily legible through the outside container or wrapper.

11. "Labeling" means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers, or accompanying an article.

12. "New drug" means either of the following:

a. Any drug, the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling, except that a drug not so recognized is not a new drug if at any time prior to the enactment of this chapter it was subject to the federal Act, and if at that time its labeling contained the same representations concerning the conditions of its use.

b. Any drug, the composition of which is such that the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, recommended, or suggested in its labeling, has become recognized as safe and effective, but which has not, other than in such investigations, been used to a material extent or for a material time under the conditions prescribed, recommended, or suggested in its labeling.

13. "Official compendium" means the official United States Pharmacopoeia National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to either document.

14. "Person" means an individual, partnership, corporation, or association.

15. "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

16. "Safe" as used in this chapter has reference to the health of a human.

17. "Secretary" means the secretary of the United States department of health and human services.

The provisions of this chapter regarding the selling of drugs, devices, or cosmetics are applicable to the manufacture, production, processing, packaging, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such article, in the conduct of any drug, device, or cosmetic establishment.

89 Acts, ch 197, §2 HF 343  
NEW section

### 203B.3 Prohibited acts.

The following acts and the causing of the acts within this state are unlawful:

1. The introduction or delivery for introduction into commerce of any drug, device, or cosmetic that is adulterated or misbranded.

2. The adulteration or misbranding of any drug, device, or cosmetic in commerce.

3. The receipt in commerce of a drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.
4. The introduction or delivery for introduction into commerce of a drug, device, or cosmetic in violation of section 203B.12.
5. The dissemination of any false advertising.
6. The refusal to permit entry or inspection, or to permit the taking of a sample or to permit access to or copying of any record as authorized by section 203B.18; or the failure to establish or maintain any record or make any report required under section 512(j), 512(l), or 512(m) of the federal Act, or the refusal to permit access to or verification or copying of any such required record.
7. The manufacture within this state of a drug, device, or cosmetic that is adulterated or misbranded.
8. The giving of a guaranty or undertaking referred to in section 203B.5, subsection 2, if the guaranty or undertaking is false, except by a person who relied upon a guaranty or undertaking to the same effect, signed by, and containing the name and address of, the person residing in this state from whom the person received the drug, device, or cosmetic in good faith.
9. The removal or disposal of a detained or embargoed drug, device, or cosmetic in violation of section 203B.6, subsection 1.
10. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a drug, device, or cosmetic, if the act is done while the article is held for sale, whether or not it would be the first sale, after shipment in commerce; and if the action results in the article being adulterated or misbranded.
11. Forging, counterfeiting, simulating, or falsely representing, or without proper authority using a mark, stamp, tag, label, or other identification device authorized or required by rules or regulations adopted under this chapter or the federal Act.
12. Making, selling, disposing of, or keeping in possession, control, or custody, or concealing a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another trademark, trade name, mark, imprint, or device or a likeness of any trademark, trade name, mark, imprint, or device upon a drug or drug container or the labeling thereof so as to render the drug a counterfeit drug.
13. The doing of an act which causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug.
14. The use by a person to the person's own advantage, or the revealing, other than to the board or to the person's authorized representative or to the courts when relevant in a judicial proceeding under this chapter, of any information acquired under authority of this chapter concerning any method or process which as a trade secret is entitled to protection.
15. The use, on the labeling of a drug or device or in advertising relating to a drug or device, of a representation or suggestion that approval of an application with respect to the drug or device is in effect under section 203B.12 or section 505, 515, or 520(g) of the federal Act, or that the drug or device complies with the provisions of any of those sections.
16. The use, in labeling, advertising, or other sales promotion of a reference to a report or analysis furnished in compliance with section 203B.18 or section 704 of the federal Act.
17. If a prescription drug is distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor of the prescription drug to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer the drug who makes written request for information as to the drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed

matter as is approved under the federal Act. This subsection does not exempt any person from a labeling requirement imposed by or under this chapter.

18. *a.* Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trademark, trade name, or other identifying mark or imprint of another trademark, trade name, mark, or imprint or any likeness of such a trademark, trade name, mark, or imprint.

*b.* Selling, dispensing, disposing of; causing to be sold, dispensed, or disposed of; or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, a drug, device, or container thereof, with knowledge that the trademark, trade name, or other identifying mark or imprint of another trademark, trade name, mark, or imprint or any likeness of any trademark, trade name, mark, or imprint has been placed thereon in a manner prohibited by paragraph "a".

*c.* Making, selling, disposing of; causing to be made, sold, or disposed of; keeping in possession, control, or custody; or concealing with intent to defraud any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another trademark, trade name, mark, or imprint or any likeness of any trademark, trade name, mark, or imprint upon a drug or container or labeling thereof so as to render the drug a counterfeit drug.

19. The failure to register in accordance with section 510 of the federal Act, the failure to provide any information required by section 510(j) or 510(k) of the federal Act, or the failure to provide a notice required by section 510(j)(2) of the federal Act.

20. *a.* The failure or refusal to:

(1) Comply with a requirement prescribed under section 518 or 520(g) of the federal Act.

(2) Furnish any notification or other material or information required by or under section 519 or 520(g) of the federal Act.

*b.* With respect to any device, the submission of any report required by or under this chapter that is false or misleading in any material respect.

21. The movement of a device in violation of an order under section 304(g) of the federal Act or the removal or alteration of any mark or label required by the order to identify the device as detained.

22. The failure to provide the notice required by section 412(b) or 412(c) of the federal Act, the failure to make the reports required by section 412(d)(1)(B) of the federal Act, or the failure to meet the requirements prescribed under section 412(d)(2) of the federal Act.

89 Acts, ch 197, §3 HF 343  
See Code editor's note  
NEW section

#### **203B.4 Injunction proceedings.**

The board may apply to the district court for, and the court has jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of section 203B.3 whether or not there exists an adequate remedy at law.

89 Acts, ch 197, §4 HF 343  
NEW section

#### **203B.5 Penalties and guaranty.**

1. A person who violates a provision of this chapter is guilty of a serious misdemeanor; but if the violation is committed after a conviction of the person under this section has become final, the person is guilty of an aggravated misdemeanor.

2. A person is not subject to the penalties of subsection 1 if the person establishes a guaranty or undertaking signed by, and containing the name and

address of another person residing in this state from whom the person received the article in good faith, to the effect that the article is not adulterated or misbranded.

3. A publisher, radio-broadcast licensee, or agency or medium which disseminates false advertising, except the manufacturer, packer, distributor, or seller of the article to which false advertising relates, is not liable under this section for the dissemination of the false advertising, unless the person knew or believed that the advertising was deceptive, false, or misleading or the person has refused upon the request of the board to furnish the board the name and address, if known, of the manufacturer, packer, distributor, seller, or advertising agency which caused the person to disseminate the advertisement.

89 Acts, ch 197, §5 HF 343  
NEW section

### **203B.6 Embargo.**

1. If a duly authorized agent of the board finds, or has probable cause to believe, that a drug, device, or cosmetic is adulterated or so misbranded as to be dangerous or fraudulent, within the meaning of this chapter, or is in violation of section 203B.12, the agent shall affix to the article a tag or other appropriate marking, giving notice that the article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by an authorized agent or the court. It is unlawful for a person to remove or dispose of the detained or embargoed article by sale or otherwise without such permission.

2. When an article is adulterated or misbranded or is in violation of section 203B.12 and has been detained or embargoed, a petition may be filed with the district court in whose jurisdiction the article is located, detained, or embargoed for an order for condemnation of the article. If a duly authorized agent has found that an article which is embargoed or detained is not adulterated or misbranded, the agent shall remove the tag or other marking.

3. If the court finds that a sampled, detained, or embargoed article is adulterated or misbranded, the article shall be destroyed at the expense of the claimant of the article, under the supervision of the agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of the article or the claimant's agent; but if the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after costs, fees, storage, and other expenses have been paid and a good and sufficient bond, conditioned that the article shall be so labeled or processed, has been executed, may by order direct that the article be delivered to the claimant for such labeling or processing under the supervision of a duly authorized agent of the board. The expense of supervision shall be paid by the claimant. The article shall be returned to the claimant and the bond shall be discharged on the representation to the court by the board that the article is no longer in violation of this chapter, and that the expenses of supervision have been paid.

89 Acts, ch 197, §6 HF 343  
See Code editor's note to §203B.3  
NEW section

### **203B.7 Prosecutions.**

The attorney general, or a county attorney, or a city attorney to whom the board reports a violation of this chapter, shall cause appropriate court proceedings to be instituted without delay and to be prosecuted in the manner required by law. Before a violation of this chapter is reported to any such attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present the person's views before the board or its agent, either orally or in writing, in person

or by attorney, with regard to the contemplated proceeding. However, the drug, device, or cosmetic shall be embargoed by the duly authorized agent.

89 Acts, ch 197, §7 HF 343  
NEW section

### **203B.8 Minor violations.**

This chapter does not require the board to report minor violations for prosecution, or for the institution of proceedings under this chapter, if the board believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

89 Acts, ch 197, §8 HF 343  
NEW section

### **203B.9 Drugs and devices—adulteration.**

A drug or device is adulterated under any of the following circumstances:

1. *a.* If it consists in whole or in part of any filthy, putrid, or decomposed substance.

*b.* If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health.

*c.* If it is a drug and the methods used in, or the facilities or controls used for its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that the drug meets the requirements of this chapter as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.

*d.* If its container is composed, in whole or part, of any poisonous or deleterious substance which may render the contents injurious to health.

2. If it purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standards set forth in the official compendium. A determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in the official compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal Act. A drug defined in an official compendium is not adulterated under this subsection because it differs from the standard of strength, quality, or purity set forth in the official compendium, if its difference in strength, quality, or purity from such standards is plainly stated on its label. If a drug is recognized in both the United States Pharmacopoeia National Formulary and the Homeopathic Pharmacopoeia of the United States it is subject to the United States Pharmacopoeia National Formulary unless it is labeled and offered for sale as a homeopathic drug, in which case it is subject to the Homeopathic Pharmacopoeia of the United States and not to the United States Pharmacopoeia National Formulary.

3. If it is not subject to subsection 2 and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

4. If it is a drug and any substance has been mixed or packed with it so as to reduce its quality or strength, or any substance has been substituted for it wholly or in part.

5. If it is, or purports to be or is represented as, a device which is subject to a performance standard established under section 514 of the federal Act, unless the device is in all respects in conformity with such standard.

6. If it is a device banned by the board or by the United States food and drug administration.

7. If it is a device and the methods used in, or the facilities or controls used for its manufacture, packing, storage, or installation are not in conformity with

applicable requirements under section 520(f)(1) of the federal Act or an applicable condition as prescribed by an order under section 520(f)(2) of the federal Act.

8. If it is a device for which an exemption has been granted under section 520(g) of the federal Act for investigational use and the person who was granted the exemption or any investigator who uses the device under the exemption fails to comply with a requirement prescribed by or under that section.

89 Acts, ch 197, §9 HF 343  
NEW section

### **203B.10 Drugs and devices—misbranding—labeling.**

A drug or device is misbranded under any of the following circumstances:

1. If its labeling is false or misleading in any particular.
2. If in a package form unless it bears a label containing both of the following:
  - a. The name and place of business of the manufacturer, packer, or distributor.
  - b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count.

However, under paragraph "a" reasonable variations shall be permitted, and exemptions as to small packages shall be allowed, in accordance with rules adopted by the board.

3. If any word, statement, or other information required by or under the 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 devices, 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.

4. If it is for use by humans and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane; or any chemical derivative of such a substance, which derivative, after investigation, has been designated as habit forming, by rules adopted by the board under this chapter or by regulations adopted by the secretary pursuant to section 502(d) of the federal Act; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May Be Habit Forming."

5. a. If it is a drug, unless both of the following apply:

(1) Its label bears, to the exclusion of any other nonproprietary name except the applicable systematic chemical name or the chemical formula:

(a) The established name of the drug, as specified in paragraph "c", if such exists; and

(b) If the drug is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilide, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein. However, the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subparagraph subdivision, applies only to prescription drugs.

(2) For a prescription drug, the established name of the prescription drug or of an ingredient is printed, on the label and on any labeling on which a name for the prescription drug or an ingredient is used, prominently and in type at least half as large as that used thereon for any proprietary name or designation for the prescription drug or ingredient. However, to the extent that compliance with subparagraph (1), subparagraph subdivision (b) or this subparagraph is imprac-

ticable, exemptions shall be allowed under rules or regulations adopted by the board or the secretary under the federal Act.

b. If it is a device and it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name, as defined in paragraph "d", prominently printed in type at least half as large as that used thereon for any proprietary name or designation for the device, except that to the extent compliance with this paragraph is impracticable, exemptions shall be allowed under rules or regulations adopted by the board or the secretary under the federal Act.

c. As used in paragraph "a", the term "*established name*", with respect to a drug or ingredient thereof, means one of the following:

(1) The applicable official name designated pursuant to section 508 of the federal Act.

(2) If no such official name exists and the drug or ingredient is an article recognized in an official compendium, then its official title in the compendium.

(3) If neither subparagraph (1) nor (2) applies, then the common or usual name, if any, of the drug or ingredient. However, if subparagraph (2) applies to an article recognized in the United States Pharmacopoeia National Formulary and in the Homeopathic Pharmacopoeia of the United States under different official titles, the official title used in the United States Pharmacopoeia National Formulary applies unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia of the United States applies.

d. As used in paragraph "b", the term "*established name*" with respect to a device means one of the following:

(1) The applicable official name of the device pursuant to section 508 of the federal Act.

(2) If no such official name exists and the device is an article recognized in an official compendium, then its official title in the compendium.

(3) If neither subparagraph (1) nor (2) applies, then any common or usual name of the device.

6. Unless its labeling bears both of the following:

a. Adequate directions for use.

b. Adequate warnings against use in those pathological conditions, or by children, where its use may be dangerous to health, or against unsafe dosage or methods or durations of administration or application, in the manner and form necessary for the protection of users.

However, if a requirement of paragraph "a", as applied to a drug or device, is not necessary for the protection of the public health, the board or the secretary shall adopt rules or regulations exempting the drug or device from that requirement.

7. If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed in the official compendium. However, the method of packing may be modified with the consent of the board or the secretary. If a drug is recognized in both the United States Pharmacopoeia National Formulary and the Homeopathic Pharmacopoeia of the United States, it is subject to the requirements of the United States Pharmacopoeia National Formulary with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it is subject to the Homeopathic Pharmacopoeia of the United States, and not to the United States Pharmacopoeia National Formulary. However, if an inconsistency exists between this subsection and subsection 5 as to the name by which the drug or its ingredients shall be designated, subsection 5 prevails.

8. If it has been found by the board or the secretary to be a drug liable to deterioration, unless it is packaged in the form and manner, and its label bears a statement of the precautions that the board or the secretary by rule or regulation

requires as necessary for the protection of public health. Such a rule or regulation shall not be established for a drug recognized in an official compendium until the board or the secretary has informed the appropriate body charged with the revision of the official compendium of the need for such packaging or labeling requirements and that body has failed within a reasonable time to prescribe such requirements.

9. *a.* If it is a drug and its container is so made, formed, or filled as to be misleading.

*b.* If it is an imitation of another drug.

*c.* If it is offered for sale under the name of another drug.

10. If it is dangerous to health when used in the dosage or manner, or with the frequency or duration prescribed, recommended, or suggested in its labeling.

11. If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless both of the following apply:

*a.* It is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal Act.

*b.* The certificate or release is in effect with respect to the drug.

12. If it is, or purports to be, or is represented as a drug, composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, unless both of the following apply:

*a.* It is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal Act.

*b.* The certificate or release is in effect with respect to the drug.

However, this subsection does not apply to any drug or class of drugs exempted by regulations adopted under section 507(c) or 507(d) of the federal Act.

13. If it is a color additive, the intended use of which is for the purpose of coloring only, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to that color additive, as contained in regulations adopted under section 706 of the federal Act.

14. If it is a prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor includes in all advertising and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to the prescription drug a true statement of all of the following:

*a.* The established name as defined in subsection 5, printed prominently and in type at least half as large as that used for any trade or brand name thereof.

*b.* The formula showing quantitatively each ingredient of the prescription drug to the extent required for labels under subsection 5.

*c.* Other information in brief summary relating to side effects, contraindications, and effectiveness as required in regulations adopted pursuant to section 701(e) of the federal Act.

15. If it was manufactured, prepared, propagated, compounded, or processed in an establishment in this state not duly registered under section 510 of the federal Act, if it was not included on a list required by section 510(j) of the federal Act, if a notice or other information respecting it was not provided as required by that section or section 510(k) of the federal Act, or if it does not bear the symbols from the uniform system for identification of devices prescribed under section 510(e) of the federal Act that are required by regulation.

16. If it is a drug and its packaging or labeling is in violation of an applicable regulation adopted pursuant to section 3 or 4 of the federal Poison Prevention Packaging Act of 1970, 15 U.S.C. §1471 et seq.

17. If a trademark, trade name, or other identifying mark, imprint, or device of another trademark, trade name, mark, or imprint or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

18. In the case of a restricted device distributed or offered for sale in this state, if either of the following applies:

- a. Its advertising is false or misleading in any particular.
- b. It is sold, distributed, or used in violation of regulations adopted pursuant to section 520(e) of the federal Act.

19. In the case of a restricted device distributed or offered for sale in this state, unless the manufacturer, packer, or distributor includes in all advertising and other descriptive printed matter issued by the manufacturer, packer, or distributor with respect to the device both of the following:

- a. A true statement of the device's established name as defined in subsection 5, printed prominently and in type at least half as large as that used for any trade or brand name thereof.

- b. A brief statement of the intended uses of the device and relevant warnings, precautions, side effects, and contraindications; and in the case of a specific device made subject to regulations adopted pursuant to the federal Act, a full description of the components of the device or the formula showing quantitatively each ingredient of the device to the extent required in regulations under the federal Act.

20. If it is a device subject to a performance standard established under section 514 of the federal Act, unless it bears labeling as prescribed in that performance standard.

21. If it is a device and there was a failure or refusal to comply with any requirement prescribed under section 518 of the federal Act respecting the device, or to furnish material required by or under section 519 of the federal Act respecting the device.

If an article is alleged to be misbranded because the labeling or advertising is misleading, then in determining whether the labeling or advertising is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling or advertising fails to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the article to which the labeling or advertising relates, under the conditions of use prescribed in the labeling or advertising or under customary or usual conditions of use.

The representation of a drug, in its labeling, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

89 Acts, ch 197, §10 HF 343  
NEW section

### **203B.11 Exemptions in cases of drugs and devices—dispensing by prescription only.**

1. The board shall adopt rules exempting from any labeling or packaging requirement of this chapter drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packaged, on condition that such drugs and devices are not adulterated or misbranded upon removal from the processing, labeling, or repacking establishment.

2. Drug and device labeling or packaging exemptions adopted pursuant to the federal Act shall apply to drugs and devices in this state except insofar as modified or rejected by rules adopted by the board.

3. a. This lettered paragraph applies to a drug intended for use by humans which is any of the following:

(1) Is a habit-forming drug to which section 203B.10, subsection 4 applies.

(2) Because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer the drug.

(3) Is limited by an approved application under section 505 of the federal Act to use under the personal supervision of a practitioner licensed by law to administer the drug.

Such a drug shall be dispensed only upon a written prescription of a practitioner licensed by law to administer the drug, or upon an oral prescription of such a practitioner which is reduced promptly to writing and filed by the pharmacist, or by refilling any such written or oral prescription if the refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to this paragraph while the drug is held for sale results in the drug being misbranded.

b. A drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer the drug is exempt from section 203B.10, except subsection 1, subsection 9, paragraphs "b" and "c", and subsections 11 and 12, and the packaging requirements of subsections 7, 8, and 16, if the drug bears a label containing the name and address of the dispenser, the date of the prescription or of its filling, the name of the prescriber, and, if stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in the prescription. This exemption does not apply to a drug dispensed in the course of the conduct of the business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of paragraph "a" of this subsection.

c. The board may, by rule, remove a drug subject to section 203B.10, subsection 4, and section 505 of the federal Act from the requirements of paragraph "a" of this subsection when such requirements are not necessary for the protection of the public health.

d. A drug which is subject to paragraph "a" of this subsection is misbranded if, at any time prior to dispensing, its label fails to bear the statement: "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which paragraph "a" of this subsection does not apply is misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence.

e. Prescription drug samples dispensed by a practitioner licensed by law to administer such drugs are exempt from section 203B.10.

89 Acts, ch 197, §11 HF 343  
NEW section

### 203B.12 New drugs.

1. A person shall not sell, deliver, offer for sale, hold for sale, or give away a new drug unless both of the following apply:

a. An application with respect to the new drug has been approved and the approval has not been withdrawn under section 505 of the federal Act.

b. A copy of the letter of approval or approvability issued by the United States food and drug administration is on file with the secretary of the board, if the product is manufactured in this state.

2. A person shall not use in humans a new drug limited to investigational use unless the person has filed with the United States food and drug administration a completed and signed "Notice of Claimed Investigational Exemption for a New Drug" form in accordance with 21 C.F.R. §312.1 and the exemption has not been terminated. The drug shall be plainly labeled in compliance with section 505(i) or 507(d) of the federal Act.

3. This section does not apply to either of the following:

- a. A drug which is not a new drug as defined in the federal Act.
- b. A drug which is licensed under the federal Public Health Service Act of July 1, 1944, 42 U.S.C. §201 et seq. or under the Animal Virus, Serum, Toxin, Antitoxin Act of March 4, 1913, 21 U.S.C. §151 et seq.

89 Acts, ch 197, §12 HF 343  
NEW section

### 203B.13 Reserved.

### 203B.14 Cosmetics—adulteration.

A cosmetic is adulterated if any of the following apply:

1. It bears or contains a poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in its labeling or under customary or usual conditions of use. However, this does not apply to coal-tar hair dye if the label of the dye bears the following legend conspicuously displayed: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness"; and the label bears adequate directions for the preliminary testing. For the purposes of this subsection and subsection 5, "hair dye" does not include eyelash dyes or eyebrow dyes.
2. It consists in whole or in part of any filthy, putrid, or decomposed substance.
3. It has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.
4. Its container is composed, in whole or in part, of a poisonous or deleterious substance which may render the contents injurious to health.
5. It is not a hair dye and it is, or it bears or contains a color additive which is, unsafe within the meaning of section 706(a) of the federal Act.

89 Acts, ch 197, §13 HF 343  
NEW section

### 203B.15 Cosmetics—misbranding.

A cosmetic is misbranded if any of the following apply:

1. Its labeling is false or misleading in any particular.
2. If in package form unless it bears a label containing both of the following:
  - a. The name and place of business of the manufacturer, packer, or distributor.
  - b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label.
3. A word, statement, or other information required by or under the authority of this chapter to appear on the label or labeling is not prominently placed there with such conspicuousness, as compared with other words, statements, designs, or devices 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.
4. Its container is so made, formed, or filled as to be misleading.
5. It is a color additive, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to that color additive prescribed under section 706 of the federal Act. This subsection does not apply to packages of color additives which, with respect to their use of cosmetics, are marketed and intended for use only in or on hair dyes, as specified in section 203B.14, subsection 1.
6. Its packaging or labeling is in violation of an applicable regulation adopted pursuant to section 3 or 4 of the federal Poison Prevention Packaging Act of 1970, 15 U.S.C. §1471 et seq.

The board shall adopt rules exempting from any labeling requirement of this chapter, cosmetics which are in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where they are originally processed or packed, on condition that such cosmetics are not adulterated or misbranded upon removal from the processing, labeling, or repacking establishment. Cosmetic labeling exemptions adopted under the federal Act apply to cosmetics in this state except as modified or rejected by rules adopted by the board.

89 Acts, ch 197, §14 HF 343  
NEW section

### **203B.16 False advertising.**

1. The advertising of a drug, device, or cosmetic is false if it is false or misleading in any particular.

2. For the purpose of this chapter, advertising is false if it represents a drug, device, or cosmetic to have any effect in the diagnosis, prevention, or treatment of arthritis, blood disorders, bone or joint diseases, kidney diseases or disorders, cancer, diabetes, gall bladder disease or disorders, heart and vascular disease, high blood pressure, diseases or disorders of the ear, mental disease or mental retardation, degenerative neurological diseases, paralysis, prostate gland disorders, conditions of the scalp affecting hair loss, baldness, endocrine disorders, sexual impotence, tumors, venereal diseases, varicose ulcers, breast enlargement, purifying blood, metabolic disorders, immune system disorders or conditions affecting the immune system, extension of life expectancy, stress and tension, brain stimulation or performance, the body's natural defense mechanisms, blood flow, and depression. However, advertising not in violation of subsection 1 is not false under this subsection if it is disseminated only to members of the medical, dental, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices. However, if the board determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named in this subsection, the board shall by rule authorize the advertising of drugs having curative or therapeutic effect for such disease, subject to the conditions and restrictions the board deems necessary in the interests of the public health. However, this subsection does not indicate that self-medication for diseases other than those named in this subsection is safe and efficacious.

89 Acts, ch 197, §15 HF 343  
NEW section

### **203B.17 Rules—hearings.**

1. The board may adopt rules pursuant to chapter 17A for the efficient enforcement of this chapter. The board may make the rules adopted under this chapter conform, insofar as practicable, with those regulations adopted pursuant to the federal Act.

2. Hearings authorized or required by this chapter shall be conducted by the board or by an officer, agent, or employee designated by the board.

89 Acts, ch 197, §16 HF 343  
NEW section

### **203B.18 Inspections.**

1. a. For purposes of enforcement of this chapter, the board or any of its authorized agents, upon presenting appropriate credentials to the owner, operator, or agent in charge, may do both of the following:

(1) Enter at reasonable times any factory, warehouse, or other establishment in which drugs, devices, or cosmetics are manufactured, processed, packed, or held,

for introduction into commerce or after such introduction; or enter a vehicle being used to transport or hold drugs, devices, or cosmetics in commerce.

(2) Inspect at reasonable times and within reasonable limits and in a reasonable manner such a factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein, and obtain samples necessary to the enforcement of this chapter. In the case of a factory, warehouse, establishment, or consulting laboratory in which prescription drugs are manufactured, processed, packed, or held, the inspection shall extend to all things therein, including records, files, papers, processes, controls, and facilities, bearing on whether prescription drugs or restricted devices which are adulterated or misbranded or which may not be manufactured, introduced into commerce, or sold or offered for sale by reason of any provision of this chapter, have been or are being manufactured, processed, packed, transported, or held in violation of or bearing on a violation of this chapter. An inspection authorized for prescription drugs by the preceding sentence shall not extend to financial data, sales data other than shipment data, pricing data, personnel data other than data as to qualifications of technical and professional personnel performing functions subject to this chapter, and research data other than data relating to new drugs, and antibiotic drugs, and devices, and subject to reporting and inspection under regulations lawfully issued pursuant to section 505(i) or 505(j), or section 507(d) or 507(g), section 519, or section 520(g) of the federal Act, and data, relating to other drugs, or devices which in the case of a new drug would be subject to reporting or inspection under lawful regulations issued pursuant to section 505(j) of the federal Act. The inspection shall be commenced and completed with reasonable promptness.

b. Paragraph "a" does not apply to any of the following:

(1) Pharmacies which maintain establishments in conformance with laws of this state regulating the practice of pharmacy and medicine and which are regularly engaged in dispensing prescription drugs, or devices, upon prescription of practitioners licensed to administer the drugs or devices to patients under the care of the practitioners in the course of their professional practice, and which do not, either through a subsidiary or otherwise, manufacture, prepare, propagate, compound, or process drugs or devices for sale other than in the regular course of their business of dispensing or selling drugs or devices at retail.

(2) Practitioners licensed by law to prescribe or administer drugs or prescribe or use devices, and who manufacture, prepare, propagate, compound, or process drugs, or manufacture or process devices solely for use in the course of their professional practice.

(3) Persons who manufacture, prepare, propagate, compound, or process drugs, or manufacture or process devices solely for use in research, teaching, or chemical analysis and not for sale.

(4) Duly employed sales representatives of pharmaceutical companies acting in the normal and customary performance of their duties.

(5) Other classes of persons the board exempts from the application of this section by rule upon a finding that inspection as applied to such classes of persons in accordance with this section is not necessary for the protection of the public health.

2. Upon completion of an inspection of a factory, warehouse, consulting laboratory, or other establishment and prior to leaving the premises, the authorized agent making the inspection shall give to the owner, operator, or agent in charge a report in writing setting forth any conditions or practices observed by the authorized agent which, in the judgment of the authorized agent, indicate that any drug, device, or cosmetic in the establishment meets either of the following:

a. Consists in whole or in part of a filthy, putrid, or decomposed substance.

b. Has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

A copy of the report shall be sent promptly to the board.

3. If the authorized agent making an inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises the authorized agent shall give to the owner, operator, or agent in charge a receipt describing the sample obtained.

4. A person required under this chapter or section 519 or 520(g) of the federal Act to maintain records and a person who is in charge or custody of such records shall, upon request of an authorized agent designated by the board, permit the authorized agent at all reasonable times to have access and to copy and verify such records.

5. For the purposes of enforcing this chapter, carriers engaged in commerce, and persons receiving drugs, devices, or cosmetics in commerce or holding such articles so received, shall, upon the request of a duly authorized agent of the board, permit the agent, at reasonable times, to have access to and to copy all records showing the movement in commerce of a drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof. It is unlawful for any such carrier or person to fail to permit such access to and copying of any such record so requested when the request is accompanied by a statement in writing specifying the nature or kind of drug, device, or cosmetic to which the request relates.

6. Evidence obtained under this section or evidence which is directly or indirectly derived from such evidence obtained under this section, shall not be used in a criminal prosecution of the person from whom the evidence was obtained; and carriers are not subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of drugs, devices, or cosmetics in the usual course of business as carriers.

89 Acts, ch 197, §17 HF 343  
NEW section

### **203B.19 Publicity.**

1. The board may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charges and their disposition.

2. The board may also cause to be disseminated information regarding drugs, devices, or cosmetics, in situations involving, in the opinion of the board, imminent danger to health, or gross deception of the consumer. This section does not prohibit the board from collecting, reporting, and illustrating the results of investigations by the board.

89 Acts, ch 197, §18 HF 343  
NEW section

### **203B.20 Chapter not applicable to commercial feed.**

This chapter does not apply to the Iowa Commercial Feed Law of 1974 under chapter 198 or to administrative rules adopted pursuant to chapter 198.

89 Acts, ch 197, §19 HF 343  
NEW section

### **203B.21 Chapter not applicable to animal drugs.**

This chapter does not apply to drugs intended for use for animals and not for humans.

89 Acts, ch 197, §20 HF 343  
NEW section

203B.22 through 203B.24 Reserved.

**203B.25 Human immunodeficiency virus home testing kits—prohibition—penalties.**

1. A person shall not advertise for sale, offer for sale, or sell in this state a home testing kit for human immunodeficiency virus antibody or antigen testing.

2. A person who violates this section is guilty of a class "D" felony.

3. The board may seek relief pursuant to section 203B.4 restraining any person from violating the provisions of this section. In addition to granting a temporary or permanent injunction, the court may impose a civil penalty not to exceed forty thousand dollars per violation of this section.

4. In addition to other remedies provided for in this chapter, 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.

5. The board may refer available evidence concerning a possible violation of this section to the attorney general. The attorney general, with or without such a referral, may institute appropriate criminal proceedings or may refer the case to the appropriate county attorney.

6. This section does not apply to a newspaper or other print medium in which the advertisement appears, or to a broadcast station or other electronic medium which disseminates the advertisement unless the medium knowingly violates this section. A person who sells home testing kits for human immunodeficiency virus antibody or antigen testing shall not cause advertising of the kits to appear in this state from a location outside this state where such advertising is not prohibited without prominently indicating in the advertisement that the sale of the kits is void in this state.

89 Acts, ch 197, §26 HF 343

Transferred to §203B.25 in Code Supplement 1989 from §203A.21 in Code 1989

Subsection 3 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. Allylprodine.

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. Difenoxin.
  - a. Diampromide.
  - p. Diethylthiambutene.
  - q. Dimenoxadol.
  - r. Dimepheptanol.
  - s. Dimethylthiambutene.
  - t. Dioxaphetyl butyrate.
  - u. Dipipanone.
  - u. Ethylmethylthiambutene.
  - w. Etonitazene.
  - x. Etoxadoline.
  - y. Furethidine.
  - z. Hydroxypethidine.
  - aa. Ketobemidone.
  - ab. Levomoramide.
  - ac. Levophenacylmorphan.
  - ad. Morpheridine.
  - ae. Noracymethadol.
  - af. Norlevorphanol.
  - ag. Normethadone.
  - ah. Norpipanone.
  - ai. Phenadoxone.
  - aj. Phenampromide.
  - ak. Phenomorphan.
  - al. Phenoperidine.
  - am. Pirtramide.
  - an. Proheptazine.
  - aa. Properidine.
  - ap. Propiram.
  - aq. Racemoramide.
  - ar. Tilidine.
  - as. Trimeperidine.
  - at. Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]- N-phenylpropanamide).
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. Cyrenorphine.
  - g. Desomorphine.
  - h. Dihydromorphine.
  - i. Etorphine (except hydrochloride salt).
  - j. Heroin.
  - k. Hydromorphanol.
  - l. Methyldesorphine.
  - m. Methyldihydromorphine.
  - n. Morphine methylbromide.
  - a. Morphine methylsulfonate.
  - p. Morphine-N-Oxide.
  - q. Myrophine.

- r. Nicocodeine.
- s. Nicomorphine.
- t. Normorphine.
- u. Phoclodine.
- u. Thebacon.
- u. 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.
- a. 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. Fenethylline.
- 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.
- n. 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, and MDEA.
- o. N-hydroxy-3,4-methylenedioxyamphetamine, also known as N-hydroxy-alpha-methyl-3,4-(methylenedioxy) phenethylamine, and N-hydroxy MDA.
- p. 4-methylaminorex, also known as 2-amino-4-methyl-5-phenyl-2-oxazoline.
- q. N,N-dimethylamphetamine (some other names: N,N, alpha-trimethylbenzene-ethanamine; N,N, alpha-trimethylphenethylamine), its salts, optical isomers and salts of optical isomers.

89 Acts, ch 109, §1, 2 SF 395  
 Subsection 2, NEW paragraph at  
 Subsection 9, NEW paragraph q

#### 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.
  - m. Delorazepam.
  - n. Diazepam.
  - o. Estazolam.
  - p. Ethchlorvynol.
  - q. Ethinamate.

- r. Ethyl Loflazepate.
- s. Fludiazepam.
- t. Flunitrazepam.
- u. Flurazepam.
- u. Halazepam.
- w. Haloxazolam.
- x. Ketazolam.
- y. Loprazolam.
- z. Lorazepam.
- aa. Lormetazepam.
- ab. Mebutamate.
- ac. Medazepam.
- ad. Meprobamate.
- ae. Methohexital.
- af. Methylphenobarbital (mephobarbital).
- ag. Nimetazepam.
- ah. Nitrazepam.
- ai. Nordiazepam.
- aj. Oxazepam.
- ak. Oxazolam.
- al. Paraldehyde.
- am. Petrichloral.
- an. Phenobarbital.
- aa. Prazepam.
- ap. Pinazepam.
- aq. Temazepam.
- ar. Tetrazepam.
- as. Triazolam.
- at. Midazolam.
- au. 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. Cathine [(+)-norpseudoephedrine].
- b. Diethylpropion.
- c. Fencamfamin.
- d. Fenproporex.
- e. Mazindol.
- f. Mefenorex.
- g. Pemoline (including organometallic complexes and chelates thereof).
- h. Phentermine.
- i. Pipradrol.
- j. 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.

**204.212 Schedule V—substances included.**

1. The controlled substances listed in this section are included in schedule V.

2. Narcotic drugs containing nonnarcotic active medicinal ingredients. Any 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, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

a. Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams.

b. Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams.

c. Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams.

d. Not more than two point five milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit.

e. Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams.

f. Not more than point five milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

3. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:

a. Buprenorphine.

4. *Stimulants.* Unless specifically excepted or 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. Propylhexedrine.

b. Pyrovalerone.

89 Acts, ch 109, §4 SF 395  
NEW subsection 4

**204.401 Prohibited acts—manufacturers—possessors—counterfeit substances—simulated controlled substances—penalties.**

1. Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance, a counterfeit substance, or a simulated controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance, a counterfeit substance, or a simulated controlled substance.

a. Violation of this subsection, with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "B" felony, and notwithstanding section 902.9, subsection 1, shall be punished by confinement for no more than fifty years and a fine of not more than one million dollars:

(1) More than one kilogram of a mixture or substance containing a detectable amount of heroin.

(2) More than five kilograms of a mixture or substance containing a detectable amount of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (a) through (c).

(3) More than fifty grams of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) More than one hundred grams of phencyclidine (PCP) or one kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) More than ten grams of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD).

(6) More than one thousand kilograms of a mixture or substance containing a detectable amount of marijuana.

b. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "B" felony, and in addition to the provisions of section 902.9, subsection 1, shall be punished by a fine of not less than five thousand dollars nor more than one hundred thousand dollars:

(1) More than one hundred grams but not more than one kilogram of a mixture or substance containing a detectable amount of heroin.

(2) More than five hundred grams but not more than five kilograms of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (a) through (c).

(3) More than five grams but not more than fifty grams of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) More than ten grams but not more than one hundred grams of phencyclidine (PCP) or more than one hundred grams but not more than one kilogram of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) Not more than ten grams of lysergic acid diethylamide (LSD).

(6) More than one hundred kilograms but not more than one thousand kilograms of marijuana.

c. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "C" felony, and in addition to the provisions of section 902.9, subsection 3, shall be punished by a fine of not less than one thousand dollars nor more than fifty thousand dollars:

(1) One hundred grams or less of a mixture or substance containing a detectable amount of heroin.

(2) Five hundred grams or less of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (a) through (c).

(3) Five grams or less of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) Ten grams or less of phencyclidine (PCP) or one hundred grams or less of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) More than fifty kilograms but not more than one hundred kilograms of marijuana.

(6) Any other controlled substance, counterfeit substance, or simulated controlled substance classified in schedule I, II, or III.

*d.* Violation of this subsection, with respect to any other controlled substances, counterfeit substances, or simulated controlled substances classified in schedule IV or V is an aggravated misdemeanor. However, violation of this subsection involving less than fifty kilograms of marijuana, is a class "D" felony, and in addition to the provisions of section 902.9, subsection 4, shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars.

*e.* A person in the immediate possession or control of a firearm while participating in a violation of this subsection shall be sentenced to two times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended.

*f.* A person in the immediate possession or control of an offensive weapon, as defined in section 724.1, while participating in a violation of this subsection, shall be sentenced to three times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended.

2. If the same person commits two or more acts which are in violation of subsection 1 and the acts occur in approximately the same location or time period so that the acts can be attributed to a single scheme, plan, or conspiracy, the acts may be considered a single violation and the weight of the controlled substances, counterfeit substances, or simulated controlled substances involved may be combined for purposes of charging the offender.

3. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a serious misdemeanor. If the controlled substance is marijuana, the punishment shall be by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars, or by both such fine and imprisonment. All or any part of a sentence imposed pursuant to this section may be suspended and the person placed upon probation upon such terms and conditions as the court may impose including the active participation by such person in a drug treatment, rehabilitation or education program approved by the court.

89 Acts, ch 225, §11 HF 780  
Subsections 1 and 2 stricken and rewritten

#### **204.406 Distribution to person under age eighteen.**

1. A person who is eighteen years of age or older who:

*a.* Unlawfully distributes a substance listed in schedule I or II, which is a narcotic or cocaine, to a person under eighteen years of age commits a class "B" felony and shall serve a minimum term of confinement of five years. However, if the substance was distributed in or on, or within one thousand feet of, the real property comprising a public or private elementary or secondary school, the person shall serve a minimum term of confinement of ten years.

*b.* Unlawfully distributes a controlled substance other than a narcotic or cocaine listed in schedule I, II, or III to a person under eighteen years of age who is at least three years younger than the violator commits a class "C" felony.

*c.* Unlawfully distributes a controlled substance listed in schedule IV or V to a person under eighteen years of age who is at least three years younger than the violator commits an aggravated misdemeanor.

2. A person who is eighteen years of age or older who:

*a.* Unlawfully distributes a counterfeit substance listed in schedule I or II which is a narcotic or cocaine, or a simulated controlled substance represented to be a narcotic or cocaine classified in schedule I or II, to a person under eighteen years of age commits a class "B" felony. However, if the substance was distributed

in or on, or within one thousand feet of, the real property comprising a public or private elementary or secondary school, the person shall serve a minimum term of confinement of ten years.

b. Unlawfully distributes a counterfeit substance other than a narcotic or cocaine listed in schedule I, II, or III, or a simulated controlled substance represented to be any substance listed in schedule I, II, or III, to a person under eighteen years of age who is at least three years younger than the violator commits a class "C" felony.

c. Unlawfully distributes a counterfeit substance listed in schedule IV or V, or a simulated controlled substance represented to be a substance listed in schedule IV or V, to a person under eighteen years of age who is at least three years younger than the violator commits an aggravated misdemeanor.

3. It is unlawful for a person to deliver a controlled substance to another person in order to act with, enter into a common scheme or design with, conspire with, or recruit the other person for the purpose of delivering a controlled substance to one or more persons under eighteen years of age. A person who violates this subsection with respect to a controlled substance classified in schedule I, II, III, IV, or V is guilty of a class "D" felony.

89 Acts, ch 225, §12 HF 780  
Section stricken and rewritten

#### **204.410 Accommodation offense.**

In a prosecution for unlawful delivery or possession with intent to deliver marijuana, if the prosecution proves that the defendant violated the provisions of section 204.401, subsection 1, by proving that the defendant delivered or possessed with intent to deliver one ounce or less of marijuana, the defendant is guilty of an accommodation offense and rather than being sentenced as if convicted for a violation of section 204.401, subsection 1, paragraph "a", shall be sentenced as if convicted of a violation of section 204.401, subsection 3. An accommodation offense may be proved as an included offense under a charge of delivering or possessing with the intent to deliver marijuana in violation of section 204.401, subsection 1. This section does not apply to hashish, hashish oil, or other derivatives of marijuana as defined in section 204.101, subsection 17.

89 Acts, ch 225, §13 HF 780  
Section amended

#### **204.413 Mandatory minimum sentence.**

A person sentenced pursuant to section 204.401, subsection 1, paragraph "a", "b", "c", "e", or "f", shall not be eligible for parole until the person has served a minimum period of confinement of one-third of the maximum indeterminate sentence prescribed by law.

This section shall not apply if:

1. The offense is found to be an accommodation pursuant to section 204.410; or
2. The controlled substance is marijuana.

89 Acts, ch 225, §14 HF 780  
Unnumbered paragraph 1 amended

**204.414 Penalty enhancement.** Repealed by 89 Acts, ch 225, §32. HF 780

## CHAPTER 205

### SALE AND DISTRIBUTION OF POISONS

#### **205.11 Enforcement.**

The provisions of this chapter and chapters 203B and 204 shall be administered and enforced by the board of pharmacy examiners. In discharging any duty or

exercising any power under those chapters, the board of pharmacy examiners shall be governed by all the provisions of chapter 189, which govern the department of agriculture and land stewardship when discharging a similar duty or exercising a similar power with reference to any of the articles dealt with in this title, to the extent that chapter 189 is not inconsistent with this chapter and chapters 203B and 204.

89 Acts, ch 197, §27 HF 343  
Section amended

### 205.12 Chemical analysis of drugs.

Any chemical analysis deemed necessary by the board of pharmacy examiners in the enforcement of this chapter and chapters 203B and 204 shall be made by the department of agriculture and land stewardship when requested by the board of pharmacy examiners.

89 Acts, ch 197, §28 HF 343  
Section amended

### 205.13 Applicability of other statutes.

Insofar as applicable the provisions of chapter 189 shall apply to the articles dealt with in this chapter and chapters 203B and 204. The powers vested in the department of agriculture and land stewardship by chapter 189 shall be deemed for the purpose of this chapter and chapters 203B and 204 to be vested in the board of pharmacy examiners.

89 Acts, ch 197, §29 HF 343  
Section amended

## CHAPTER 206

### PESTICIDES

#### 206.5 Certification requirements—rules.

1. 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.

2. The secretary shall adopt, by rule, requirements for the examination, reexamination, and certification of applicants.

3. Commercial applicators shall choose between one-year certification for which the applicator shall pay a thirty dollar fee or three-year certification for which the applicator shall pay a seventy-five dollar fee. Public applicators are exempt from the thirty and seventy-five dollar certification fees and instead are subject to a ten-dollar annual certification fee or a fifteen dollar fee for a three-year certification. The commercial, public, or private applicator shall be tested prior to initial certification. In addition, a commercial, public, or private applicator shall be reexamined every three years following initial certification before the applicator is eligible for a renewal of certification. However, a commercial, public, or private applicator need not be certified to apply pesticides for a period of twenty-one days from the date of initial employment if the commercial, public, or private applicator is under the direct supervision of a certified applicator. For the purposes of this section, "under the direct supervision of" means that the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is physically present, by being in sight or hearing distance of the supervised person.

4. A commercial applicator who applies pesticides to agricultural land may, in lieu of the requirement of direct supervision, elect to be exempt from the certification requirements for a commercial applicator for a period of twenty-one

days, if the applicator meets the requirements of a private applicator. 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. The secretary shall also adopt, by rule, the criteria for the allowance of the selection of the written or oral examination by a person requiring certification.

5. 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.

6. An employee of a food processing and distribution establishment is exempt from the certification requirements of this section provided that at least one person holding a supervisory position is certified and provided that the employer provides a program, approved by the department, for training, testing, and certification of personnel who apply, as an incidental part of their duties, any pesticide on property owned or rented by the employer. The secretary shall adopt rules to administer the provisions of this paragraph.

7. An employee of a food processing and distribution establishment is exempt from the certification requirements of this section provided that at least one person holding a supervisory position is certified and provided that the employer provides a program, approved by the department, for training, testing, and certification of personnel who apply, as an incidental part of their duties, any pesticide on property owned or rented by the employer. The secretary shall adopt rules to administer the provisions of this paragraph.

8. 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 and for a thirty-day renewal grace period. The secretary shall also adopt rules which allow for an exemption from certification for a person who uses certain services and is not solely a pesticide applicator, but who uses the services as an incidental part of the person's duties.

89 Acts, ch 296, §20 SF 141

Unnumbered paragraph 3 amended and section divided into numbered subsections

### **206.33 Daminozide—prohibition.**

A person shall not offer for sale, sell, purchase, apply, or use a pesticide containing daminozide in this state.

89 Acts, ch 127, §1 SF 485

NEW section

## **CHAPTER 214A**

### **MOTOR VEHICLE FUEL**

#### **214A.1 Definitions.**

The following definitions shall apply to the various terms used in this chapter:

1. "*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. The products commonly known as kerosene and distillate or petroleum products of lower gravity (Baume scale), when not used to propel a motor vehicle or for compounding or combining with a motor vehicle fuel, are exempt from this chapter except as provided in section 214A.2A.

2. "Retail dealer" shall mean and include any person, firm, partnership, association, or corporation who operates, maintains, or conducts, either in person, or by any agent, employee, or servant, any place of business, filling station, pump station, or tank wagon, from which any motor vehicle fuel, as defined herein, is sold or offered for sale, at retail, or to the final or ultimate consumer.

3. "Wholesale dealer" shall mean and include any person, firm, partnership, association, or corporation, other than retail dealers as defined in subsection 3 of this section, who sells, keeps, or holds, for sale, or purchase for the purpose of sale within this state, any motor vehicle fuel.

4. "Oxygenate octane enhancer" means oxygen-containing compounds, including but not limited to alcohols, ethers, or ethanol.

5. "A.S.T.M." means the American society for testing and materials.

89 Acts, ch 75, §1 HF 254  
Subsection 4 amended

### 214A.2 Tests and standards.

1. The secretary shall adopt rules pursuant to chapter 17A for carrying out this chapter. The rules may include, but are not limited to, specifications relating to motor fuel or oxygenate octane enhancers. In the interest of uniformity, the secretary shall adopt by reference or otherwise specifications relating to tests and standards for motor fuel or oxygenate octane enhancers, established by the American society for testing and materials (A.S.T.M.), unless the secretary determines those specifications are inconsistent with this chapter or are not appropriate to the conditions which exist in this state.

2. Octane number shall conform to the average of values obtained from the A.S.T.M. D-2699 research method and the A.S.T.M. D-2700 motor method.

Octane number for regular grade leaded gasoline shall follow the specifications of A.S.T.M. but shall not be less than eighty-eight.

Octane number for premium grade leaded gasoline shall follow the specifications of A.S.T.M. but shall not be less than ninety-three.

Octane number for regular grade unleaded gasoline shall follow the specifications of A.S.T.M. but shall not be less than eighty-seven.

Octane number for premium grade unleaded gasoline shall follow the specifications of A.S.T.M. but shall not be less than ninety.

3. Gasoline shall not contain a mixture of more than thirteen percent ethanol.

4. Gasoline shall not contain methanol without an equal amount of cosolvent, and shall not contain more than five percent methanol.

89 Acts, ch 75, §2 HF 254  
Subsection 1 amended

### 214A.3 False representations.

A person for purposes of selling shall not falsely represent the quality or kind of any motor vehicle fuel or oxygenate octane enhancer or add coloring matter thereto for the purpose of misleading the public as to its quality.

89 Acts, ch 75, §3 HF 254  
Section amended

### 214A.4 Intrastate shipments.

A wholesale dealer or retail dealer shall not receive or sell or hold for sale, within this state, any motor vehicle fuel or oxygenate octane enhancer for which specifications are prescribed in this chapter, unless the dealer first secures from the refiner or producer of the motor vehicle fuel or oxygenate octane enhancer, a statement, verified by the oath of a competent chemist, employed by or representing the refiner or producer, showing the true standards and tests of the motor vehicle fuel or oxygenate octane enhancer, obtained by the methods referred to in section 214A.2. The verified tests are required and must accompany the bill of

lading or shipping documents representing the shipment of the motor vehicle fuel or oxygenate octane enhancer into this state before the shipment can be received and unloaded.

89 Acts, ch 75, §4 HF 254  
Section amended

#### **214A.5 Sales slip on demand.**

Each wholesale dealer or retail dealer in this state shall, when making a sale of motor vehicle fuel, give to each purchaser upon demand a sales slip upon which must be printed the words "This motor vehicle fuel conforms to the standard of specifications required by the state of Iowa."

Each wholesale dealer in this state shall, when making a sale of oxygenate octane enhancer, give to each purchaser upon demand a sales slip upon which must be printed the words "This oxygenate octane enhancer conforms to the standard specifications required by the state of Iowa."

89 Acts, ch 75, §5 HF 254  
NEW unnumbered paragraph 2

#### **214A.6 Department tests—fee.**

A wholesale dealer or retail dealer may, at the dealer's option, forward to the department for testing a sample taken in the manner prescribed in this section. The dealer shall draw from the original container, in the presence of a reputable person, into a clean receptacle, suitable for shipping, a sample of the motor vehicle fuel or oxygenate octane enhancer, not less than eight fluid ounces, and shall carefully seal the receptacle and affix to the receptacle a written label showing the car number or other identifying marks upon the original container from which the sample was taken. This procedure shall be performed in the presence of the reputable person, and the wholesale dealer or retail dealer. The reputable person shall make a statement, under oath, that the sample was taken in the manner provided for in this section, and shall refer to the identifying marks upon the label. The sworn statement, together with a fee of two dollars for making the test, shall be forwarded to the department. The department shall test the sample by the methods provided for in section 214A.2 and shall forward to the wholesale dealer or retail dealer a certified copy of the results of the tests.

89 Acts, ch 75, §6 HF 254  
Section amended

#### **214A.7 Department inspection—samples tested.**

The department, its agents or employees, shall, from time to time, make or cause to be made tests of any motor vehicle fuel or oxygenate octane enhancer which is being sold, or held or offered for sale within this state, and for such purposes the inspectors have the right to enter upon the premises of any wholesale dealer or retail dealer of motor vehicle fuel or oxygenate octane enhancer within this state, and to take from any container a sample of the motor vehicle fuel or oxygenate octane enhancer, not to exceed eight fluid ounces. The sample shall be sealed and appropriately marked or labeled by the inspector and delivered to the department. The department shall make, or cause to be made, complete analyses or tests of the motor vehicle fuel or oxygenate octane enhancer by the methods specified in section 214A.2.

89 Acts, ch 75, §7 HF 254  
Section amended

#### **214A.8 Prohibition.**

A retail or wholesale dealer defined in this chapter shall not sell any motor vehicle fuel or oxygenate octane enhancer in the state that fails to meet applicable standards and specifications set out in this chapter.

89 Acts, ch 75, §8 HF 254  
Section amended

**214A.10 Transfer pipes.**

A wholesale dealer, retail dealer, or other person shall not, within this state, use the same pipeline, for transferring motor vehicle fuel, including gasoline, or oxygenate octane enhancer from one container to another, if the pipeline is used for transferring kerosene or other inflammable product used for open flame illuminating or heating purposes.

89 Acts, ch 75, §9 HF 254  
Section amended

**214A.16 Notice of blended fuel.**

All motor vehicle fuel kept, offered, or exposed for sale, or sold at retail containing over one percent ethanol, methanol, or any combination of oxygenate octane enhancers shall be identified as "with" either "ethanol", "methanol", "ethanol/methanol", or similar wording on a white adhesive decal with black letters at least one-half inch high and at least one-quarter inch wide placed between thirty and forty inches above the driveway level on the front sides of any container or pump from which the motor fuel is sold.

89 Acts, ch 296, §21 SF 141  
Section amended

**214A.18 Whole-cent pricing.** Repealed by 89 Acts, ch 131, §64. HF 447

## CHAPTER 217

### DEPARTMENT OF HUMAN SERVICES

Annual plan for use of federal social services block grant funds; 89 Acts, ch 310, §11 SF 521  
Targeted case management program for children and pregnant women to be expanded to entire state and evaluated;  
89 Acts, ch 304, §204 SF 538

Department to adopt rules requiring intermediate care facilities to execute separate contracts for pharmaceutical vendor services and consultant pharmacist services, and to report evaluation of selective contracting arrangements with health care providers, as used in other states; 89 Acts, ch 304, §903, 904 SF 538

**217.3 Duties of council.**

The council of human services shall:

1. Organize annually and select a chairperson and vice chairperson.
2. Adopt and establish policy for the operation and conduct of the department of human services, subject to any guidelines which may be adopted by the general assembly, and the implementation of all services and programs thereunder.
3. Report immediately to the governor any failure by the director or any administrator of the department of human services to carry out any of the policy decisions or directives of the council.
4. Approve the budget of the department of human services prior to submission to the governor. Within two weeks of the date the budget is approved, the council shall publicize and hold a public hearing to provide explanations and hear questions, opinions, and suggestions regarding the budget. Invitations to the hearing shall be extended to the governor, the governor-elect, the director of the department of management, and other persons deemed by the council as integral to the budget process.
5. Insure that all programs administered or services rendered by the department directly to any citizen or through a local board of welfare to any citizen are co-ordinated and integrated so that any citizen does not receive a duplication of services from various departments or local agencies that could be rendered by one department or local agency. If the council finds that such is not the case, it shall hear and determine which department or local agency shall provide the needed service or services and enter an order of their determination by resolution of the council which must be concurred in by at least a majority of the members.

Thereafter such order or resolution of the council shall be obeyed by all state departments and local agencies to which it is directed.

6. Adopt all necessary rules recommended by the director or administrators of divisions hereinafter established prior to their promulgation pursuant to chapter 17A.

7. Approve the establishment of any new division or reorganization, consolidation or abolition of any established division prior to the same becoming effective.

8. Recommend to the governor the names of individuals qualified for the position of director of human services when a vacancy exists in the office.

89 Acts, ch 283, §18 SF 540  
Subsection 4 amended

#### **217.11 Family development and self-sufficiency council created.**

A family development and self-sufficiency council is established within the department of human services. The council consists of the following persons:

1. The director of the department of human services or the director's designee.
2. The director of the Iowa department of public health or the director's designee.
3. The administrator of the division of community action agencies in the department of human rights or the administrator's designee.
4. The administrator of the division of children, youth, and families of the department of human rights or the administrator's designee.
5. The dean of the college of family and consumer sciences at Iowa State University or the dean's designee.
6. A representative from the family life institute designated by the director of that institute.
7. The director of the public policy center at the University of Iowa or the director's designee.
8. Two recipients or former recipients of the aid to dependent children program, selected by the other members of the committee.
9. The head of the department of home economics at the University of Northern Iowa or that person's designee.
10. The director of the department of education or the director's designee.

The department of human services shall contract with the department of health and human rights to staff and administer grants provided under section 217.12.

89 Acts, ch 283, §19 SF 540  
NEW subsection 10

#### **217.34 Debt setoff.**

The investigations division of the department of inspections and appeals and the department of human services shall provide assistance to set off against a person's or provider's income tax refund or rebate any debt which has accrued through written contract, subrogation, departmental recoupment procedures, or court judgment and which is in the form of a liquidated sum due and owing the department of human services. The department of inspections and appeals, with approval of the department of human services, shall adopt rules under chapter 17A necessary to assist the department of revenue and finance in the implementation of the setoff under section 421.17, subsection 21 in regard to money owed to the state for public assistance overpayments. The department of human services shall adopt rules under chapter 17A necessary to assist the department of revenue and finance in the implementation of the setoff under section 421.17, subsection 21, in regard to collections by the child support recovery unit and the foster care recovery unit.

89 Acts, ch 250, §1 SF 153  
Section amended

#### **217.38 Restitution to individuals of Japanese ancestry.**

Notwithstanding any other law of this state, payments paid to an eligible individual of Japanese ancestry under section 105 of the Civil Liberties Act of

1988, Pub. L. No. 100-383, Title I, shall not be considered as income or an asset for determining the eligibility for state or local government benefit or entitlement programs. The proceeds are not subject to recoupment for the receipt of governmental benefits or entitlements and liens, except liens for child support, are not enforceable against these sums for any reason.

89 Acts, ch 285, §1 SF 186

Retroactive to January 1, 1988, for tax years beginning on or after that date; 89 Acts, ch 285, §10 SF 186  
NEW section

### **217.39 Reserved.**

### **217.40 Training for guardians and conservators.**

The department of human services, or a person designated by the director, shall establish training programs designed to assist all duly appointed guardians and conservators in understanding their fiduciary duties and liabilities, the special needs of the ward, and how to best serve the ward and the ward's interests.

89 Acts, ch 178, §2 HF 585

NEW section

## **CHAPTER 218**

### **GOVERNMENT OF INSTITUTIONS UNDER DEPARTMENT OF HUMAN SERVICES**

### **218.85 Uniform system of accounts.**

The director of the department of human services through the administrators of the divisions in control of state institutions shall install in all such state institutions under the director's control and supervision the most modern, complete, and uniform system of accounts, records, and reports possible, which system shall be prescribed by the director of revenue and finance as authorized in section 421.31, subsection 10, and, among other matters, shall clearly show the detailed facts relative to the handling and uses of all purchases.

89 Acts, ch 284, §5 SF 119

Section amended

### **218.92 Dangerous mental patients.**

When a patient in a state hospital-school for the mentally retarded, a mental health institute, or an institution under the administration of the administrator of the division of mental health of the department of human services, has become so mentally disturbed as to constitute a danger to self, to other patients in the institution, or to the public, and the institution cannot provide adequate security, the administrator of mental health with the consent of the director of the Iowa department of corrections may order the patient to be transferred to the Iowa medical and classification center, if the executive head of the institution from which the patient is to be transferred, with the support of a majority of the medical staff, recommends the transfer in the interest of the patient, other patients, or the public. If the patient transferred was hospitalized pursuant to sections 229.6 to 229.15, the transfer shall be promptly reported to the court which hospitalized the patient, as required by section 229.15, subsection 4. The Iowa medical and classification center has the same rights, duties, and responsibilities with respect to the patient as the institution from which the patient was transferred had while the patient was hospitalized there. The cost of the transfer shall be paid from the funds of the institution from which the transfer is made.

89 Acts, ch 83, §34 SF 112

Section amended

## CHAPTER 220

### IOWA FINANCE AUTHORITY

#### 220.6 Executive director—responsibilities.

1. The governor, subject to confirmation by the senate, shall appoint an executive director of the authority, who shall serve at the pleasure of the governor. The executive director shall be selected primarily for administrative ability and knowledge in the field, without regard to political affiliation. The executive director shall not, directly or indirectly, exert influence to induce any other officers or employees of the state to adopt a political view, or to favor a political candidate for office.

2. The executive director shall advise the authority on matters relating to housing and housing finance, carry out all directives from the authority, and hire and supervise the authority's staff pursuant to its directions. All employees of the authority are exempt from the merit system.

3. The executive director, as secretary of the authority, shall keep a record of the proceedings of the authority and shall be custodian of all books, documents and papers filed with the authority and of its minute book and seal. The executive director shall have authority to cause to be made copies of all minutes and other records and documents of the authority and to give certificates under the seal of the authority to the effect that such copies are true copies and all persons dealing with the authority may rely upon such certificates.

89 Acts, ch 302, §11 SF 536  
Subsection 2 amended

#### 220.53 Residential reverse annuity mortgage model program.

The authority shall develop a model reverse annuity mortgage conforming to the requirements of this chapter, and shall offer reverse annuity mortgages to qualified participants.

89 Acts, ch 267, §10 SF 361  
Iowa finance authority authorized to issue bonds for the residential reverse annuity mortgage model program, to be repaid from program proceeds; 89 Acts, ch 267, §11 SF 361  
NEW section

#### 220.54 through 220.60 Reserved.

#### 220.107 Infrastructure loan program.

The authority may issue its bonds or notes for the purpose of pooling obligations of two or more cities, counties, or sanitary districts for the purpose of financing infrastructure as defined by sections 15.284 and 15.285. Sections 220.103 through 220.106 shall apply with respect to the issuance of these bonds or notes or the disposition of proceeds of these bonds or notes.

89 Acts, ch 314, §9 HF 785  
NEW section

#### 220.108 through 220.110 Reserved.

#### 220.134 through 220.140 Reserved.

#### RURAL COMMUNITY 2000 PROGRAM

#### 220.141 Rural community 2000 financing program—definitions—funding—bonds and notes.

1. The authority shall cooperate with the department of economic development in the creation, administration, and financing of the rural community 2000 financing program established in sections 15.281 through 15.287.

2. Terms used in this part have the meanings given them in sections 15.281 through 15.287 unless the context requires otherwise.

3. The authority may issue its bonds and notes for the purpose of funding the revolving fund created under section 15.287 and for the purpose of refunding any of its bonds or notes issued for purposes under this section.

4. The authority 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 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 authority 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 amount payable under the loan agreements or any other instruments securing the debt obligations under the loan agreements.

c. That the bondholders or noteholders may enforce the remedies provided in the loan agreements or other 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 other instruments, the payment or performance may be enforced in accordance with the loan agreement or other instrument.

d. Other terms and conditions as deemed necessary or appropriate by 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 220.28, subsection 4, apply to bonds or notes issued and powers granted to the authority under this section, except to the extent they are inconsistent with this section.

89 Acts, ch 301, §19 HF 703

Section implemented only upon governor's executive order; 89 Acts, ch 301, §22 HF 703

NEW section

### **220.142 Security – reserve funds – pledges – nonliability – irrevocable contracts.**

1. The authority shall provide in the resolution, trust agreement, or other instrument authorizing the issuance of its bonds or notes pursuant to section 220.141 that the principal of, premium, and interest on the bonds or notes are payable solely out of the pledged receipts as designated in the resolution, trust agreement, or other instrument authorizing the issuance of the bonds. Except for those tax revenues deposited in the revolving loan fund created under section 15.287, the state shall not appropriate tax revenues, directly or indirectly, to the authority for the payment of its bonds, notes, or obligations issued under section 220.141.

For purposes of this section, unless the context otherwise requires, “*pledged receipt*” means the revenues and receipts received or to be received by the authority from grants, gifts, or payments on guarantees made to the authority by any person, from accrued interest received from the sale of obligations, from income from the investment of special funds of the authority, including the revolving fund established under section 15.287, from the revenues and receipts deposited in the revolving fund established under section 15.287, and from any other moneys which are available for the payment of principal, premium, if any, or interest on the bonds, notes, or other obligation issued under section 220.141.

2. The authority may establish reserve funds to secure one or more issues of its bonds or notes. The authority may deposit in a reserve fund established under this subsection proceeds of the sale of its bonds or notes and other money which is made available from any other source.

3. It is the intention of the general assembly that a pledge made in respect of bonds or notes shall be valid and binding from the time the pledge is made, that the money or property so pledged and received after the pledge by the authority shall immediately be subject to the lien of the pledge without physical delivery or further act, and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, whether or not the parties have notice of the lien. The resolution, trust agreement, or any other instrument by which a pledge is created does not need to be recorded or filed under the uniform commercial code, chapter 554, to be valid, binding, or effective against the parties.

4. Neither the members of the authority nor persons executing the bonds or notes are liable personally on the bonds or notes or are subject to personal liability or accountability by reason of the issuance of the bonds or notes.

5. The bonds or notes issued by the authority are not an indebtedness or other liability of the state or of a political subdivision of the state within the meaning of any constitutional or statutory debt limitations but are special obligations of the authority, and are payable solely out of pledged receipts to the extent that the pledged receipts are designated in the resolution, trust agreement, or other instrument of the authority authorizing the issuance of the bonds or notes as being available as security for such bonds or notes. The authority shall not pledge the faith or credit of the state or of a political subdivision of the state to the payment of any bonds or notes. The issuance of any bonds or notes by the authority does not directly, indirectly, or contingently obligate the state or a political subdivision of the state to apply moneys from, or to levy or pledge any form of taxation whatever, to the payment of the bonds or notes.

6. The state pledges to and agrees with the holders of bonds or notes issued under the rural community 2000 financing program, that the state will not limit or alter the rights and powers vested in the authority to fulfill the terms of a contract made by the authority with respect to the bonds or notes, or in any way impair the rights and remedies of the holders until the bonds or notes, together with the interest on the bonds or notes, including interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state, as it refers to holders of bonds or notes of the authority, in a contract with the holders.

7. The authority shall not issue more than thirty million dollars in bonds or notes in any one fiscal year and not more than a total dollar amount of one hundred fifty million shall be outstanding at any time. Bonds issued to fund new infrastructure of the state shall not exceed one-third of the maximum and shall not be limited as to the amount which may be issued in any one fiscal year.

89 Acts, ch 301, §20 HF 703

Governor's item veto applied to subsection 7 as passed, and subsection 8 renumbered as 7

NEW section

### **220.143 Adoption of rules.**

The authority shall adopt rules pursuant to chapter 17A to implement sections 220.141 and 220.142. The rules shall provide for additional objective criteria for the ranking of applications for grants. Not less than fifty percent weight shall be given to financial need, giving appropriate allowance to such factors as legal and economic capacity to incur debt, local tax levels, local effort, costs of vital services including sewer and water, unmet needs for basic services, per capita income, and the extent to which a project is calculated to improve the conditions which result in greater financial need. No grant shall be for less than ten percent or more than thirty percent of the reasonable cost of a project. The rules shall not impose restrictions on local costs in addition to chapter 384, division VI.

89 Acts, ch 301, §21 HF 703

NEW section

**220.144 through 220.150** Reserved.

IOWA TANK ASSISTANCE BONDS

**220.151 Authority to issue Iowa tank assistance bonds.**

The authority shall assist the Iowa comprehensive petroleum underground storage tank fund as provided in chapter 455G and the authority shall have all of the powers that the Iowa comprehensive petroleum underground storage tank fund board possesses and which that board delegates to the authority in a chapter 28E agreement or a contract between the authority and the Iowa comprehensive petroleum underground storage tank fund board with respect to the issuance and securing of bonds and carrying out the purposes of chapter 455G.

89 Acts, ch 131, §12 HF 447  
See Code editor's note  
NEW section

## CHAPTER 225C

### MENTAL HEALTH, MENTAL RETARDATION, AND DEVELOPMENTAL DISABILITIES

Chapter repealed effective July 1, 1990; §225C.24

**225C.20 Responsibilities of counties for individual case management services.**

Individual case management services shall be provided by the department except when a county or a consortium of counties contracts with the department to provide the services. A county or consortium of counties may contract to be the provider at any time and the department shall agree to the contract so long as the contract meets the standards for case management adopted by the department. The county or consortium of counties may subcontract for the provision of case management services so long as the subcontract meets the same standards. A mental health, mental retardation, and developmental disabilities coordinating board may change the provider of individual case management services at any time. If the current or proposed contract is with the department, the coordinating board shall provide written notification of a proposed change to the department on or before August 15 and written notification of an approved change on or before October 15 in the fiscal year which precedes the fiscal year in which the change will take effect.

89 Acts, ch 283, §20 SF 540  
Section amended

**225C.22 Central registry for brain injuries.** Repealed by 89 Acts, ch 320, §13. See §135.22. HF 775

## CHAPTER 226

### STATE MENTAL HEALTH INSTITUTES

**226.9A Custody of juvenile patients.**

Effective January 1, 1991, a juvenile who is committed to a state mental health institute shall not be placed in a secure ward with adults.

89 Acts, ch 283, §21 SF 540  
NEW section

## CHAPTER 229

## HOSPITALIZATION OF MENTALLY ILL PERSONS

Supreme court task force on involuntary hospitalization requested; 89 Acts, ch 275, §8 HF 579

**229.1 Definitions.**

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

1. "*Administrator*" means the administrator of that division of the department of human services having jurisdiction of the state mental health institutes, or that administrator's designee.
2. "*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.
3. "*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.
4. "*Clerk*" means the clerk of the district court.
5. "*Hospital*" means either a public hospital or a private hospital.
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. "*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.
8. "*Patient*" means a person who has been hospitalized or ordered hospitalized to receive treatment pursuant to section 229.14.
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. "*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.
11. "*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.
12. "*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.
13. "*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.

14. "*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 because of that illness meets any of the following criteria:

a. Is likely to physically injure the person's self or others if allowed to remain at liberty without treatment.

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.

c. Is unable to satisfy the person's needs for nourishment, clothing, essential medical care, or shelter so that it is likely that the person will suffer substantial physical injury, serious physical debilitation, or death within the reasonably foreseeable future.

89 Acts, ch 275, §1 HF 579

Subsections renumbered to alphabetize, and subsection 14 amended

### **229.1A Legislative intent.**

As mental illness is often a continuing condition which is subject to wide and unpredictable changes in condition and fluctuations in reoccurrence and remission, this chapter shall be liberally construed to give recognition to these medical facts.

89 Acts, ch 275, §2 HF 579

NEW section

### **229.11 Judge may order immediate custody.**

If the applicant requests that the respondent be taken into immediate custody and the judge, upon reviewing the application and accompanying documentation, finds probable cause to believe that the respondent is seriously mentally impaired and is likely to injure the respondent or other persons if allowed to remain at liberty, the judge may enter a written order directing that the respondent be taken into immediate custody by the sheriff or the sheriff's deputy and be detained until the hospitalization hearing, which shall be held no more than five days after the date of the order, except that if the fifth day after the date of the order is a Saturday, Sunday, or a holiday, the hearing may be held on the next succeeding business day. The judge may order the respondent detained for the period of time until the hearing is held, and no longer, in accordance with subsection 1 if possible, and if not then in accordance with subsection 2 or, only if neither of these alternatives are available, in accordance with subsection 3. Detention may be:

1. In the custody of a relative, friend or other suitable person who is willing to accept responsibility for supervision of the respondent, and the respondent may be placed under such reasonable restrictions as the judge may order including, but not limited to, restrictions on or a prohibition of any expenditure, encumbrance or disposition of the respondent's funds or property; or

2. In a suitable hospital the chief medical officer of which shall be informed of the reasons why immediate custody has been ordered and may provide treatment which is necessary to preserve the respondent's life, or to appropriately control behavior by the respondent which is likely to result in physical injury to the respondent or to others if allowed to continue, but may not otherwise provide treatment to the respondent without the respondent's consent; or

3. In a public or private facility in the community which is suitably equipped and staffed for the purpose, provided that detention in a jail or other facility intended for confinement of those accused or convicted of crime may not be ordered except in cases of actual emergency when no other secure facility is accessible and then only for a period of not more than twenty-four hours and under close supervision.

The clerk shall furnish copies of any orders to the respondent and to the applicant if the applicant files a written waiver signed by the respondent.

89 Acts, ch 275, §3 HF 579  
NEW unnumbered paragraph at end of section

### **229.12 Hearing procedure.**

1. At the hospitalization hearing, evidence in support of the contentions made in the application shall be presented by the county attorney. During the hearing the applicant and the respondent shall be afforded an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of any other interested person. The respondent has the right to be present at the hearing. If the respondent exercises that right and has been medicated within twelve hours, or such longer period of time as the court may designate, prior to the beginning of the hearing or an adjourned session thereof, the judge shall be informed of that fact and of the probable effects of the medication upon convening of the hearing.

2. All persons not necessary for the conduct of the proceeding shall be excluded, except that the court may admit persons having a legitimate interest in the proceeding. Upon motion of the county attorney, the judge may exclude the respondent from the hearing during the testimony of any particular witness if the judge determines that that witness' testimony is likely to cause the respondent severe emotional trauma.

3. The respondent's welfare shall be paramount and the hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, but consistent therewith the issue shall be tried as a civil matter. Such discovery as is permitted under the Iowa rules of civil procedure shall be available to the respondent. The court shall receive all relevant and material evidence which may be offered and need not be bound by the rules of evidence. There shall be a presumption in favor of the respondent, and the burden of evidence in support of the contentions made in the application shall be upon the applicant. If upon completion of the hearing the court finds that the contention that the respondent is seriously mentally impaired has not been sustained by clear and convincing evidence, it shall deny the application and terminate the proceeding.

4. If the respondent is not taken into custody under section 229.11, but the court subsequently finds good cause to believe that the respondent is about to depart from the jurisdiction of the court, the court may order such limited detention of the respondent as is authorized by section 229.11 and is necessary to insure that the respondent will not depart from the jurisdiction of the court without the court's approval until the proceeding relative to the respondent has been concluded.

5. The clerk shall furnish copies of any orders to the respondent and to the applicant if the applicant files a written waiver signed by the respondent.

89 Acts, ch 275, §4 HF 579  
NEW subsection 5

### **229.16 Discharge and termination of proceeding.**

When the condition of a patient who is hospitalized under section 229.14, subsection 2, or is receiving treatment under section 229.14, subsection 3, or is in full-time care and custody under section 229.14, subsection 4, is such that in the opinion of the chief medical officer the patient no longer requires treatment or

care for serious mental impairment, the chief medical officer shall tentatively discharge the patient and immediately report that fact to the court which ordered the patient's hospitalization or care and custody. The court shall thereupon issue an order confirming the patient's discharge from the hospital or from care and custody, as the case may be, and shall terminate the proceedings pursuant to which the order was issued. Copies of the order shall be sent by certified mail to the hospital, the patient, and the applicant if the applicant has filed a written waiver signed by the patient.

89 Acts, ch 275, §5 HF 579  
Section amended

### **229.23 Rights and privileges of hospitalized persons.**

Every person who is hospitalized or detained under this chapter shall have the right to:

1. Prompt evaluation, necessary psychiatric services, and additional care and treatment as indicated by the patient's condition. A comprehensive, individualized treatment plan shall be timely developed following issuance of the court order requiring involuntary hospitalization. The plan shall be consistent with current standards appropriate to the facility to which the person has been committed and with currently accepted standards for psychiatric treatment of the patient's condition, including chemotherapy, psychotherapy, counseling and other modalities as may be appropriate.

2. The right to refuse treatment by shock therapy or chemotherapy, unless the use of these treatment modalities is specifically consented to by the patient's next of kin or guardian. The patient's right to refuse treatment by chemotherapy shall not apply during any period of custody authorized by section 229.4, subsection 3, section 229.11 or section 229.22, but this exception shall extend only to chemotherapy treatment which is, in the chief medical officer's judgment, necessary to preserve the patient's life or to appropriately control behavior by the person which is likely to result in physical injury to that person or others if allowed to continue. The patient's right to refuse treatment by chemotherapy shall also not apply during any period of custody authorized by the court pursuant to section 229.13 or 229.14. In any other situation in which, in the chief medical officer's judgment, chemotherapy is appropriate for the patient but the patient refuses to consent thereto and there is no next of kin or guardian to give consent, the chief medical officer may request an order authorizing treatment of the patient by chemotherapy from the district court which ordered the patient's hospitalization.

3. In addition to protection of the person's constitutional rights, enjoyment of other legal, medical, religious, social, political, personal and working rights and privileges which the person would enjoy if the person were not so hospitalized or detained, so far as is possible consistent with effective treatment of that person and of the other patients of the hospital. If the patient's rights are restricted, the physician's direction to that effect shall be noted on the patient's record. The department of human services shall, in accordance with chapter 17A establish rules setting forth the specific rights and privileges to which persons so hospitalized or detained are entitled under this section, and the exceptions provided by section 17A.2, subsection 7, paragraphs "a" and "k", shall not be applicable to the rules so established. The patient or the patient's next of kin or friend shall be advised of these rules and be provided a written copy upon the patient's admission to or arrival at the hospital.

89 Acts, ch 275, §6 HF 579  
Subsection 1 amended

### **229.25 Medical records to be confidential—exceptions.**

The records maintained by a hospital or other facility relating to the examination, custody, care and treatment of any person in that hospital or facility

pursuant to this chapter shall be confidential, except that the chief medical officer shall release appropriate information under any of the following circumstances:

1. The information is requested by a licensed physician, attorney or advocate who provides the chief medical officer with a written waiver signed by the person about whom the information is sought.

2. The information is sought by a court order.

3. The person who is hospitalized or that person's guardian, if the person is a minor or is not legally competent to do so, signs an informed consent to release information. Each signed consent shall designate specifically the person or agency to whom the information is to be sent, and the information may be sent only to that person or agency.

Such records may be released by the chief medical officer when requested for the purpose of research into the causes, incidence, nature and treatment of mental illness, however information shall not be provided in a way that discloses patients' names or which otherwise discloses any patient's identity.

When the chief medical officer deems it to be in the best interest of the patient and the patient's next of kin to do so, the chief medical officer may release appropriate information during a consultation which the hospital or facility shall arrange with the next of kin of a voluntary or involuntary patient, if requested by the patient's next of kin.

89 Acts, ch 275, §7 HF 579  
Unnumbered paragraph 3 at end of section amended

## CHAPTER 230A

### COMMUNITY MENTAL HEALTH CENTERS

#### 230A.16 Establishment of standards.

The administrator of the division of mental health, mental retardation, and developmental disabilities shall recommend and the mental health and mental retardation commission shall adopt standards for community mental health centers and comprehensive community mental health programs, with the overall objective of ensuring that each center and each affiliate providing services under contract with a center furnishes high quality mental health services within a framework of accountability to the community it serves. The standards shall be in substantial conformity with those of the psychiatric committee of the joint committee on accreditation of hospitals and other recognized national standards for evaluation of psychiatric facilities unless in the judgment of the administrator of the division of mental health, mental retardation, and developmental disabilities, with approval of the mental health and mental retardation commission, there are sound reasons for departing from such standards. When recommending standards under this section, the administrator of the division of mental health, mental retardation, and developmental disabilities shall designate an advisory committee representing boards of directors and professional staff of community mental health centers to assist in the formulation or revision of standards. At least a simple majority of the members of the advisory committee shall be lay representatives of community mental health center boards of directors. At least one member of the advisory committee shall be a member of a county board of supervisors. The standards recommended under this section shall include requirements that each community mental health center established or operating as authorized by section 230A.1 shall:

1. Maintain and make available to the public a written statement of the services it offers to residents of the county or counties it serves, and employ or contract for services with affiliates employing specified minimum numbers of professional personnel possessing specified appropriate credentials to assure that

the services offered are furnished in a manner consistent with currently accepted professional standards in the field of mental health.

2. Unless it is governed by a board of trustees elected or selected under sections 230A.5 and 230A.6, be governed by a board of directors which adequately represents interested professions, consumers of the center's services, socioeconomic, cultural, and age groups, and various geographical areas in the county or counties served by the center.

3. Arrange for the financial condition and transactions of the community mental health center to be audited once each year by the auditor of state. However, in lieu of an audit by state accountants, the local governing body of a community mental health center organized under this chapter may contract with or employ certified public accountants to conduct the audit, pursuant to the applicable terms and conditions prescribed by sections 11.6 and 11.19 and audit format prescribed by the auditor of state. Copies of each audit shall be furnished by the accountant to the administrator of the division of mental health, mental retardation, and developmental disabilities, and the board of supervisors supporting the audited community mental health center.

4. Adopt and implement procedural rules ensuring that no member of the center's board of directors, or board of trustees receives from the center information which identifies or is intended to permit the members of the board to identify any person who is a client of that center.

89 Acts, ch 264, §6 HF 451  
Subsection 3 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 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 or deserted the child.

b. Whose parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

c. Who has suffered or is imminently likely to suffer harmful effects as a result of either of the following:

(1) Mental injury caused by the acts of the child's parent, guardian, or custodian.

(2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

d. Who has been 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, custodian, or other member of the household in which the child resides.

i. Who has been the subject of or a party to sexual activities for hire or who poses for live display or for photographic or other means of pictorial reproduction or display which is designed to appeal to the prurient interest and is patently offensive; and taken as a whole, lacks serious literary, scientific, political or artistic value.

j. Who is without a parent, guardian or other custodian.

k. Whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody.

l. Who for good cause desires to have the child's parents relieved of the child's care and custody.

m. Who is in need of treatment to cure or alleviate chemical dependency and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

n. Whose parent's or guardian's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care.

6A. "*Desertion*" means the relinquishment or surrender for a period in excess of six months of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of desertion need not include the intention to desert, but is evidenced by the lack of attempted contact with the child or by only incidental contact with the child.

7. "*Director*" means the director 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 stepparent or a relative within the fourth degree of consanguinity to a child who has assumed responsibility for that child, a person who has accepted a release of custody pursuant to division IV, or a person appointed by a court or juvenile court having jurisdiction over a child. The rights and duties of a custodian with respect to a child are as follows:

- a. To maintain or transfer to another the physical possession of that child.
- b. To protect, train, and discipline that child.
- c. To provide food, clothing, housing, and medical care for that child.
- d. To consent to emergency medical care, including surgery.
- e. To sign a release of medical information to a health professional.

All rights and duties of a custodian shall be subject to any residual rights and duties remaining in a parent or guardian.

12. "*Delinquent act*" means:

a. The violation of any state law or local ordinance which would constitute a public offense if committed by an adult except any offense which by law is exempted from the jurisdiction of this chapter.

b. The violation of a federal law or a law of another state which violation constitutes a criminal offense if the case involving that act has been referred to the juvenile court.

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.

26A. "*Juvenile*" means the same as "*child*". However, in the interstate compact on juveniles, sections 232.171 and 232.172, "*juvenile*" means a person defined as a juvenile in the law of a state which is a party to the compact.

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.

31A. "*Mental injury*" means a nonorganic injury to a child's intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, considering the child's cultural origin.

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.

52A. "*Voluntary placement*" means a foster care placement in which the department provides foster care services to a child according to a signed placement agreement between the department and the child's parent or guardian.

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.

89 Acts, ch 169, §1 HF 402; 89 Acts, ch 229, §1-4 HF 688; 89 Acts, ch 230, §1, 2 HF 690

Subsection 1 amended

Subsection 6, paragraphs a, b, c and h amended

Subsection 6, NEW paragraph n

NEW subsection 6A

NEW subsection 31A

NEW subsection 52A

### 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. "*Confidential access to a child*" means access to a child, during an investigation of an alleged act of child abuse, who is alleged to be the victim of the child

abuse. The access may be accomplished by interview, observation, or examination of the child. As used in this subsection:

a. *"Interview"* means the verbal exchange between the department investigator and the child for the purpose of developing information necessary to protect the child. A department investigator is not precluded from recording visible evidence of abuse.

b. *"Observation"* means direct physical viewing of a child under the age of four by the department investigator where the viewing is limited to the child's body other than the genitalia and pubes. *"Observation"* also means direct physical viewing of a child age four or older by the department investigator without touching the child or removing an article of the child's clothing, and doing so without the consent of the child's parent, custodian, or guardian. A department investigator is not precluded from recording evidence of abuse obtained as a result of a child's voluntary removal of an article of clothing without inducement by the investigator. However, if prior consent of the child's parent or guardian, or an ex parte court order, is obtained, *"observation"* may include viewing the child's unclothed body other than the genitalia and pubes.

c. *"Examination"* means direct physical viewing, touching, and medically necessary manipulation of any area of the child's body by a physician licensed under chapter 148 or 150A.

4. *"Department"* means the state department of human services and includes the local, county and regional offices of the department.

5. *"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; a licensed dental hygienist, a registered nurse or licensed practical nurse; and a basic emergency medical care provider certified under section 147.161 or an advanced emergency medical care provider certified under section 147A.6.

6. *"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.

7. *"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.

d. Any person providing care for a child, but with whom the child does not reside, without reference to the duration of the care.

8. *"Registry"* means the central registry for child abuse information established in section 235A.14.

89 Acts, ch 24, §1 SF 105; 89 Acts, ch 89, §16 HF 371; 89 Acts, ch 230, §3, 4 HF 690

See Code editor's note to §22.7

NEW subsection 3 and existing subsections 3-7 renumbered as 4-8

Subsection 5 amended

Subsection 7, NEW paragraph d

### **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 in the scope of professional practice, examines, attends, or treats a child and who reasonably believes the child has been abused. Notwithstanding section 140.3, this provision applies to a health practitioner who receives information confirming that a child is infected with a sexually transmitted disease.

b. 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, licensed 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, or mental health professional, who, in the scope of professional practice 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 six months of initial employment or self-employment involving the examination, attending, counseling, or treatment of children on a regular basis. Within one month of initial employment or self-employment, the person shall obtain a statement of the abuse reporting requirements from the person's employer or, if self-employed, from the department. The person shall complete at least two hours of additional child abuse identification and reporting training every five years. If the person is an employee of a hospital or similar institution, or of a public or private institution, agency, or facility, the employer shall be responsible for providing the child abuse identification and reporting training. If the person is self-employed, the person shall be responsible for obtaining the child abuse identification and reporting training. The person may complete the initial or additional training as part of a continuing education program required under chapter 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.

89 Acts, ch 89, §17 HF 371; 89 Acts, ch 230, §5 HF 690; 89 Acts, ch 265, §40 HF 794

See Code editor's note to §22.7

Subsection 1, paragraphs a and b 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. The department, within five working days of commencing the investigation, shall provide written notification of the investigation to the child's parents. However, if the department shows the court to the court's satisfaction that notification is likely to endanger the child or other persons, the court shall issue an emergency order restraining the notification.

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.

e. An interview of the person alleged to have committed the child abuse, if the person's identity and location are known, to afford the person the opportunity to address the allegations of the child abuse report. The interview shall be conducted, or an opportunity for an interview shall be provided, prior to a determination of child abuse being made. The court may waive the requirement of the interview for good cause.

3. The investigation may, with the consent of the parent or guardian, include a visit to the home of the child named in the report and an interview or observation of the child may be conducted. If permission to enter the home to interview or observe 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 and interview or observe the child. The department may utilize a multidisciplinary team in investigations of child abuse.

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, whether or not the reporter made the specific child abuse report, 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. The investigation may include a visit to a facility providing care to the child named in the report or to any public or private school subject to the authority of the department of education where the child named in the report is located. The administrator of a facility, or a public or private school shall cooperate with the investigator by providing confidential access to the child named in the report for the purpose of interviewing the child, and shall allow the investigator confidential access to other children for the purpose of conducting interviews in order to obtain relevant information. The investigator may observe a child named in a report in accordance with the provisions of section 232.68, subsection 3, paragraph "b". A witness shall be present during an observation of a child. Any child age ten years of age or older can terminate contact with the investigator by stating or indicating the child's wish to discontinue the contact. The immunity granted by section 232.73 applies to acts or omissions in good faith of such administrators and their facilities or school districts for cooperating in an investigation and allowing confidential access to a child. The department may utilize a multidisciplinary team to conduct investigations of child abuse involving employees or agents of a facility providing care for a child.

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 four regular working days 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 as provided under section 232.90, subsection 2.

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.

16. The department may request criminal history data from the department of public safety on any person believed to be responsible for an injury to a child

which, if confirmed, would constitute child abuse. The department shall establish procedures for determining when a criminal history records check under this subsection is necessary.

17. In each county or multicounty area in which more than fifty child abuse reports are made per year, the department shall establish a multidisciplinary team, as defined in section 235A.13, subsection 9. Upon the department's request, a multidisciplinary team shall assist the department in the assessment, diagnosis, and disposition of a child abuse report.

89 Acts, ch 230, §6-13 HF 690; 89 Acts, ch 283, §22 SF 540  
 See Code editor's note  
 Subsections 1, 3, 5, 7, and 11 amended  
 Subsection 2, NEW paragraph e  
 Subsection 6 stricken and rewritten  
 NEW subsection 17

PART 3  
 TEMPORARY CUSTODY OF A CHILD

**232.78 Temporary custody of a child pursuant to ex parte court order.**

1. The juvenile court may enter an ex parte order directing a peace officer to take custody of a child before or after the filing of a petition under this chapter provided all of the following apply:

a. The person responsible for the care of the child is absent, or though present, was asked and refused to consent to the removal of the child and was informed of an intent to apply for an order under this section, or there is reasonable cause to believe that a request for consent would further endanger the child, or there is reasonable cause to believe that a request for consent will cause the parent, guardian, or legal custodian to take flight with the child.

b. It appears that the child's immediate removal is necessary to avoid imminent danger to the child's life or health.

c. There is not enough time to file a petition and hold a hearing under section 232.95.

2. The order shall specify the facility to which the child is to be brought. Except for good cause shown or unless the child is sooner returned to the place where the child was residing or permitted to return to the child day care facility, a petition shall be filed under this chapter within three days of the issuance of the order.

3. The juvenile court may enter an order authorizing a physician or hospital to provide emergency medical or surgical procedures before the filing of a petition under this chapter provided:

a. Such procedures are necessary to safeguard the life and health of the child; and

b. There is not enough time to file a petition under this chapter and hold a hearing as provided in section 232.95.

4. The juvenile court, before or after the filing of a petition under this chapter, may enter an ex parte order authorizing a physician or hospital to conduct an outpatient physical examination or authorizing a physician, a psychologist certified under section 154B.7, or a community mental health center accredited pursuant to chapter 230A to conduct an outpatient mental examination of a child if necessary to identify the nature, extent, and cause of injuries to the child as required by section 232.71, subsection 2, provided all of the following apply:

a. The parent, guardian, or legal custodian is absent, or though present, was asked and refused to provide written consent to the examination.

b. The juvenile court has entered an ex parte order directing the removal of the child from the child's home or a child day care facility under this section.

c. There is not enough time to file a petition and to hold a hearing as provided in section 232.98.

5. Any person who may file a petition under this chapter may apply for, or the court on its own motion may issue, an order for temporary removal under this section. An appropriate person designated by the court shall confer with a person

seeking the removal order, shall make every reasonable effort to inform the parent or other person legally responsible for the child's care of the application, and shall make such inquiries as will aid the court in disposing of such application.

89 Acts, ch 230, §14 HF 690

Subsection 1, unnumbered paragraph 1 and paragraph a amended

### **232.79 Custody without court order.**

1. A peace officer may take a child into custody or a physician treating a child may keep the child in custody without a court order as required under section 232.78 and without the consent of a parent, guardian, or custodian provided that both of the following apply:

a. The child is in a circumstance or condition that presents an imminent danger to the child's life or health.

b. There is not enough time to apply for an order under section 232.78.

2. If a person authorized by this section removes or retains custody of a child, the person shall:

a. Bring the child immediately to a place designated by the rules of the court for this purpose, unless the person is a physician treating the child and the child is or will presently be admitted to a hospital.

b. Make every reasonable effort to inform the parent, guardian, or custodian of the whereabouts of the child.

c. Promptly inform the court in writing of the emergency removal and the circumstances surrounding the removal.

3. Any person, agency, or institution acting in good faith in the removal or keeping of a child pursuant to this section, and any employer of or person under the direction of such a person, agency, or institution, shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed as the result of such removal or keeping.

4. When the court is informed that there has been an emergency removal or keeping of a child without a court order, the court shall direct the department of human services or the juvenile probation department to make every reasonable effort to communicate immediately with the child's parent or parents or other person legally responsible for the child's care. The court shall also authorize the department of human services or the juvenile probation department to cause a child thus removed or kept to be returned if it concludes there is not an imminent risk to the child's life and health in so doing. If the child is not returned, the department of human services or the juvenile probation department shall forthwith cause a petition to be filed within three days after the removal.

5. When there has been an emergency removal or keeping of a child without a court order, a physical examination of the child by a licensed medical practitioner shall be performed within twenty-four hours of such removal, unless the child is returned to the child's home within twenty-four hours of the removal.

89 Acts, ch 230, §15 HF 690

Subsection 1, unnumbered paragraph 1 and paragraph a amended

### **232.88 Summons, notice, subpoenas and services.**

After a petition has been filed the court shall issue and serve summons, notice, subpoenas, and other process in the same manner as for adjudicatory hearings in cases of juvenile delinquency as provided in section 232.37.

89 Acts, ch 229, §5 HF 688

Section amended

### **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 the person has the ability to pay in whole or in part for counsel appointed for the child. If the court determines that the 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 an amount the court finds appropriate in the manner and to whom the court directs. If the person 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 2, paragraph "b".

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.

89 Acts, ch 283, §24 SF 540  
Subsection 3 amended

### **232.90 Duties of county attorney.**

1. 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.

2. The county attorney shall represent the department in proceedings arising under this division. However, if there is disagreement between the department and the county attorney regarding the appropriate action to be taken, the department may request to be represented by the attorney general in place of the county attorney.

89 Acts, ch 230, §16 HF 690  
Section amended

### 232.92 Exclusion of public from hearings.

Hearings held under this division are open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having an open hearing. Upon closing the hearing to the public, the court may admit those persons who have direct interest in the case or in the work of the court.

89 Acts, ch 230, §17 HF 690  
Section stricken and rewritten

### 232.104 Permanency hearing.

1. If a child has been placed in foster care 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, including the child's foster parent if the child has been placed with the foster parent for at least twelve months, 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.
  - d. 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.
  - e. 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.

89 Acts, ch 229, §6 HF 688

Subsection 1, unnumbered paragraph 1 amended

### **232.114 Duties of county attorney.**

1. Upon the filing of a petition the county attorney shall represent the state in all adversary proceedings arising under this division and shall present evidence in support of the petition.

2. The county attorney shall represent the department in proceedings arising under this division. However, if there is disagreement between the department and the county attorney regarding the appropriate action to be taken, the department may request to be represented by the attorney general in place of the county attorney.

89 Acts, ch 230, §18 HF 690

Section amended

### **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 or deserted.

c. The court finds that both of the following have occurred:

(1) 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 or neglected 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.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

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 parents have not maintained significant and meaningful 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 is four years of age or older.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) 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, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that at the present time 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 parent continues to lack the ability or willingness to respond to services which would correct the situation.

(4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

g. The court finds that all of the following have occurred:

(1) The child is three years of age or younger.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) 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 at the present time.

h. The court finds that both of the following have occurred:

(1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.

(2) There is clear and convincing evidence that the circumstances surrounding the abuse or neglect of the child, despite the receipt of services, constitutes imminent danger to the child.

i. The court finds that both of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has been imprisoned for a crime against the child, the child's sibling, or another child in the household, or the parent has been imprisoned and it is unlikely that the parent will be released from prison for a period of five or more years.

j. 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 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a chronic mental illness and has been repeatedly institutionalized for mental illness, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

*k.* 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 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

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.

*c.* For a child who has been placed in foster family care, any relevant testimony or written statement provided by the child's foster parents.

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.

89 Acts, ch 229, §7-12 HF 688

Subsection 1, paragraphs b, d and e amended

Subsection 1, paragraph c, stricken and rewritten

Subsection 1, paragraph f, former subparagraph (3) stricken and subparagraphs (4) and (5) renumbered as (3) and (4)

Subsection 1, NEW paragraphs g-k

Subsection 2, NEW paragraph c

### **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 guardian 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. Within forty-five days of receipt of the termination order, and every forty-five days thereafter until the court determines such reports are no longer necessary, the guardian shall report to the court regarding efforts made to place the child for adoption or providing the rationale as to why adoption would not be in the child's best interest.

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.

8. Hearings held under this division are open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having a public hearing. Upon closing the hearing, the court may admit persons who have a direct interest in the case or in the work of the court.

89 Acts, ch 229, §13 HF 688; 89 Acts, ch 230, §19 HF 690

Subsection 5 amended

NEW subsection 8

### **232.141 Expenses.**

1. Except as otherwise provided by law, the court shall inquire into the ability of the child or the child's parent to pay expenses incurred pursuant to subsection 2 and subsection 4 and, after giving the parent a reasonable opportunity to be heard, the court may order the parent to pay all or part of the costs of the child's care, examination, treatment, legal expenses, or other expenses. An order entered

under this section does not obligate a parent paying child support under a custody decree, except that part of the monthly support payment may be used to satisfy the obligations imposed by the order entered pursuant to this section. If a parent fails to pay as ordered, without good reason, the court may proceed against the parent for contempt and may inform the county attorney who shall proceed against the parent to collect the unpaid amount. Any payment ordered by the court shall be a judgment against each of the child's parents and a lien as provided in section 624.23. If all or part of the amount that the parents are ordered to pay is subsequently paid by the county or state, the judgment and lien shall thereafter be against each of the parents in favor of the county to the extent of the county's payments and in favor of the state to the extent of the state's payments.

2. Upon certification of the court, all of the following expenses are a charge upon the county in which the proceedings are held, to the extent provided in subsection 3:

a. The fees and mileage of witnesses and the expenses of officers serving notices and subpoenas.

b. Reasonable compensation for an attorney appointed by the court to serve as counsel or guardian ad litem.

3. Costs incurred under subsection 2 shall be paid as follows:

a. A county shall be required to pay for the fiscal year beginning July 1, 1989, an amount equal to the county's base cost for witness and mileage fees and attorney fees established pursuant to section 232.141, subsection 8, paragraph "d", Code 1989, for the fiscal year beginning July 1, 1988, plus an amount equal to the percentage rate of change in the consumer price index as tabulated by the federal bureau of labor statistics for the current year times the county's base cost.

b. A county's base cost for a fiscal year plus the percentage rate of change amount as computed in paragraph "a" is the county's base cost for the succeeding fiscal year. The amount to be paid in the succeeding year by the county shall be computed as provided in paragraph "a".

c. Costs incurred under subsection 2 which are not paid by the county under paragraphs "a" and "b" shall be reimbursed by the state. A county shall apply for reimbursement to the judicial department which shall prescribe rules and forms to implement this subsection.

4. Upon certification of the court, all of the following expenses are a charge upon the state to the extent provided in subsection 5:

a. The expenses of transporting a child to or from a place designated by the court for the purpose of care or treatment.

b. Expenses for mental or physical examinations of a child if ordered by the court.

c. The expenses of care or treatment ordered by the court.

5. If no other provision of law requires the county to reimburse costs incurred pursuant to subsection 4, the department shall reimburse the costs as follows:

a. The department shall prescribe by administrative rule all services eligible for reimbursement pursuant to subsection 4 and shall establish an allowable rate of reimbursement for each service.

b. The department shall receive billings for services provided and, after determining allowable costs, shall reimburse providers at a rate which is not greater than allowed by administrative rule. Reimbursement paid to a provider by the department shall be considered reimbursement in full unless a county voluntarily agrees to pay any difference between the reimbursement amount and the actual cost. When there are specific program regulations prohibiting supplementation those regulations shall be applied to providers requesting supplemental payments from a county. Billings for services not listed in administrative rule shall not be paid. However, if the court orders a service not currently listed in administrative rule, the department shall review the order and, if reimbursement

for the service of the department is not in conflict with other law or administrative rule, and meets the criteria of subsection 4, the department shall reimburse the provider.

6. If a child is given physical or mental examinations or treatment relating to a child abuse investigation with the consent of the child's parent, guardian, or legal custodian and no other provision of law otherwise requires payment for the costs of the examination and treatment, the costs shall be paid by the state. Reimbursement for costs of services described in this subsection is subject to subsection 5.

7. A county charged with the costs and expenses under subsections 2 and 3 may recover the costs and expenses from the county where the child has legal settlement by filing verified claims which are payable as are other claims against the county. A detailed statement of the facts upon which a claim is based shall accompany the claim. Any dispute involving the legal settlement of a child for which the court has ordered payment under this section shall be settled pursuant to sections 252.22 and 252.23.

89 Acts, ch 283, §23 SF 540  
Section stricken and rewritten

**232.173 and 232.174** Reserved.

#### DIVISION XI

#### VOLUNTARY FOSTER CARE PLACEMENT

#### **232.175 Purpose and policy.**

It is the purpose and policy of this division to provide court oversight for placements that involve a handicapped child placed voluntarily in foster care by the child's parent or guardian, through review of the voluntary placements every six months by the department's foster care review committees or by a local foster care review board. It is the purpose and policy of this division to assure the additional safeguard of court oversight as required by Pub. L. No. 96-272, as codified in 42 U.S.C. §671(a)(16), 627(a)(2)(B), and 675(1),(5), while maintaining parental decision-making authority.

89 Acts, ch 169, §2 HF 402  
NEW section

#### **232.176 Jurisdiction.**

The court shall have exclusive jurisdiction over voluntary placement proceedings.

89 Acts, ch 169, §3 HF 402  
NEW section

#### **232.177 Venue.**

Venue for voluntary placement proceedings shall be determined in accordance with section 232.62.

89 Acts, ch 169, §4 HF 402  
NEW section

#### **232.178 Petition.**

1. The department shall file a petition to initiate a voluntary placement proceeding in accordance with criteria established pursuant to the Child Welfare Act of 1980, Pub. L. No. 96-272, as codified in 42 U.S.C. §627(a).

2. The petition and subsequent court documents shall be entitled "In the interests of . . . , a child".

3. The petition shall state the names and residence of the child and the child's living parents, guardian, custodian, and guardian ad litem, if any; the age of the child; and the length of time the child has been in foster care.

4. The petition shall allege that the child is placed in foster care on the basis of a signed voluntary placement agreement between the department and the child's parent or guardian; that the child has an emotional, physical, or intellectual handicap which requires care and treatment; that the child's parent or guardian has demonstrated a willingness to fulfill responsibilities to the child as defined in the case permanency plan; and that the voluntary placement is in the child's best interests.

89 Acts, ch 169, §5 HF 402  
NEW section

### **232.179 Appointment of counsel and guardian ad litem.**

Upon the filing of a petition, the court shall appoint a guardian ad litem to represent the best interests of the child unless the court determines that the child already has a guardian ad litem who represents the child's best interests. If the child's parent, guardian, or custodian desires counsel but cannot pay the counsel's expenses, the court may appoint counsel.

89 Acts, ch 169, §6 HF 402  
NEW section

### **232.180 Duties of county attorney.**

Upon the filing of a petition and the request of the department, the county attorney shall represent the state in all adversary proceedings arising under this division and shall present evidence in support of the petition as provided under section 232.90.

89 Acts, ch 169, §7 HF 402  
NEW section

### **232.181 Social report.**

Upon the filing of a petition, the department shall submit a social report. The report shall include the child's handicap, the case permanency plan, a description of the foster care placement, and a description of parental participation in developing the child's case permanency plan and the parent's compliance with responsibilities to the child as defined in the plan.

89 Acts, ch 169, §8 HF 402  
NEW section

### **232.182 Initial determination.**

1. Upon the filing of a petition, the court shall fix a time for an initial determination hearing and give notice of the hearing to the child's parent, guardian, or custodian, counsel or guardian ad litem, and the department.

2. A parent who does not have custody of the child may petition the court to be made a party to proceedings under this division.

3. An initial determination hearing is open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing only if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having an open hearing. Upon closing the hearing to the public, the court may admit those persons who have direct interest in the case or in the work of the court.

4. The hearing shall be informal and all relevant and material evidence shall be admitted.

5. After the hearing is concluded, the court shall make and file written findings as to whether the voluntary foster care placement is in the child's best interests. The court shall determine that voluntary foster care placement is in the child's best interests if the court finds that both of the following conditions exist:

a. The child has an emotional, physical, or intellectual handicap which requires care and treatment.

b. The child's parent or guardian has demonstrated a willingness to fulfill responsibilities to the child as defined in the case permanency plan.

6. The hearing may be waived and the court may issue the findings required under subsection 5 on the basis of the department's written report if all parties agree to the hearing's waiver.

89 Acts, ch 169, §9 HF 402  
NEW section

### **232.183 Dispositional hearing.**

1. Following an entry of an initial determination order pursuant to section 232.182, the court shall hold a dispositional hearing in order to determine the future status of the child based on the child's best interests. Notice of the hearing shall be given to the child and the child's parent, guardian, or custodian, and the department.

2. The dispositional hearing shall be held within eighteen months of the date the child was placed in foster care. The dispositional hearing may be held in conjunction with the initial determination hearing.

3. A dispositional hearing is open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having an open hearing. Upon closing the hearing to the public, the court may admit those persons who have direct interest in the case or in the work of the court.

4. The hearing shall be informal and all relevant and material evidence shall be admitted.

5. Following the hearing, the court shall issue a dispositional order. The dispositional orders which the court may enter subject to its continuing jurisdiction are as follows:

a. An order that the child's voluntary placement shall be terminated.

b. An order that the child's voluntary placement may continue if the department and the child's parent or guardian continue to agree to the voluntary placement.

c. An order that the child remain in foster care and that the county attorney or department file, within three days, a petition alleging the child to be a child in need of assistance.

6. With respect to each child whose placement was approved pursuant to subsection 5, the court shall continue to hold periodic dispositional hearings. The hearings shall not be waived or continued beyond eighteen months following the last dispositional hearing. After a dispositional hearing, the court shall enter one of the dispositional orders authorized under subsection 5.

7. A dispositional hearing is not required if the court has approved either the local foster care review board review or the department's administrative review procedure as defined under section 234.42, and all parties agree. This provision does not eliminate the initial judicial determination required under section 232.182.

89 Acts, ch 169, §10 HF 402  
NEW section

## **CHAPTER 234**

### **CHILD AND FAMILY SERVICES**

#### **234.6 Powers and duties of the administrator.**

The administrator shall be vested with the authority to administer aid to dependent children, state supplementary assistance, food programs, child welfare,

and emergency relief, family and adult service programs and any other form of public welfare assistance and institutions that may hereafter be placed under the administrator's administration. The administrator shall perform such duties, formulate and make such rules as may be necessary; shall outline such policies, dictate such procedure and delegate such powers as may be necessary for competent and efficient administration. Subject to restrictions that may be imposed by the director of human services and the council on human services, the administrator shall have power to abolish, alter, consolidate or establish subdivisions and may abolish or change offices created in connection therewith. The administrator may employ necessary personnel and fix their compensation; may allocate or reallocate functions and duties among any subdivisions now existing or hereafter established; and may promulgate rules relating to the employment of personnel and the allocation of their functions and duties among the various subdivisions as competent and efficient administration may require.

The administrator shall:

1. Co-operate with the federal social security board created by title VII of the Social Security Act [42 U.S.C. 901], enacted by the 74th Congress of the United States and approved August 14, 1935, or other agency of the federal government for public welfare assistance, in such reasonable manner as may be necessary to qualify for federal aid, including the making of such reports in such form and containing such information as the federal social security board, from time to time, may require, and to comply with such regulations as such federal social security board, from time to time, may find necessary to assure the correctness and verification of such reports.

2. Furnish information to acquaint the public generally with the operation of the acts under the jurisdiction of the administrator.

3. With the approval of the director of human services, the governor, the director of management, and the director of revenue and finance, set up from the funds under the administrator's control and management an administrative fund and from the administrative fund pay the expenses of operating the division.

4. Notwithstanding any provisions to the contrary in chapter 239 relating to the consideration of income and resources of claimants for assistance, the administrator, with the consent and approval of the director of human services and the council on human services, shall make such rules as may be necessary to qualify for federal aid in the assistance programs administered by the administrator.

5. The department of human services shall have the power and authority to use the funds available to it, to purchase services of all kinds from public or private agencies to provide for the needs of children, including but not limited to psychiatric services, supervision, specialized group, foster homes and institutional care.

6. Have authority to use funds available to the department, subject to any limitations placed on the use thereof by the legislation appropriating the funds, to provide to or purchase, for families and individuals eligible therefor, services including but not limited to the following:

a. Day care for children or adults, in facilities which are licensed or are approved as meeting standards for licensure.

b. Foster care, including foster family care, group homes and institutions.

c. Homemaker services, meeting the standards of the department, provided by agency trained or supervised homemakers placed in the homes of families or adults to assist with maintenance and management of the home, upgrade the level of living of occupants of the home, provide care for children while one or both parents are away, or provide personal care for an ill or disabled family member.

d. Family planning.

e. Protective services.

- f. Chore services.
  - g. Preparation and delivery of meals to families or individuals living in private homes who, by reason of illness, infirmity or disability are unable to prepare nourishing meals and have no spouse or other individual living with or responsible for them who are able to do so.
  - h. Transportation services.
  - i. Any services, not otherwise enumerated in this subsection, authorized by or pursuant to the United States Social Security Act of 1934, as amended.
7. Administer the food programs authorized by federal law, and recommend rules necessary in the administration of those programs to the director for promulgation pursuant to chapter 17A.
8. Provide consulting and technical services to the director of the department of education, or the director's designee, upon request, relating to prekindergarten, kindergarten, and before and after school programming and facilities.
9. Recommend rules for their adoption by the council of human services for before and after school child care programs, conducted within and by or contracted for by school districts, that are appropriate for the ages of the children who receive services under the programs.

89 Acts, ch 206, §2 SF 223  
NEW subsections 8 and 9

#### **234.11 Duties of the county board.**

The county board may direct emergency relief with only the powers and duties prescribed in the laws relating thereto and shall determine the allocation of funds to child day care facilities, organizations, and agencies pursuant to sections 237A.14 to 237A.18. Organizations and agencies which serve day care facilities and any licensed or registered facilities may apply for the funds. The board shall act in an advisory capacity on programs within the jurisdiction of the department of human services. The board shall review policies and procedures of the local departments of human services and make recommendations for changes to insure that effective services are provided in their respective communities. The county board may also make recommendations for new programs which it is believed would meet needs in the community. The state department shall establish a procedure to insure that county board recommendations receive appropriate review at the level of policy determination.

89 Acts, ch 209, §2 SF 88  
Unnumbered paragraph 2 stricken

#### **234.39 Responsibility for cost of services.**

It is the intent of this chapter that an individual receiving foster care services and the individual's parents or guardians, shall have primary responsibility for paying the cost of the care and services. The support obligation established and adopted under this section shall be consistent with the limitations on legal liability established under sections 222.78 and 230.15, and by any other statute limiting legal responsibility for support which may be imposed on a person for the cost of care and services provided by the department. Support obligations shall be established as follows:

1. For an individual to whom section 234.35, subsection 2 or 4, or section 234.36 is applicable, a dispositional order of the juvenile court requiring the provision of foster care shall establish, after notice and a reasonable opportunity to be heard is provided to a parent or guardian, the amount of the parent's or guardian's support obligation for the cost of foster care provided by the department, if a support obligation has not previously been established under an order of the district court or court of comparable jurisdiction in another state. The court shall establish the amount of the parent's or guardian's support obligation and the amount of support debt accrued and accruing in accordance with the child

support guidelines prescribed under section 598.21, subsection 4. However, the court may adjust the prescribed obligation after considering a recommendation by the department for expenses related to goals and objectives of a case permanency plan as defined under section 237.15. The order shall direct the payment of the support obligation to the collection services center for the use of the department's foster care recovery unit. The order shall be filed with the clerk of the district court in which the responsible parent or guardian resides and has the same force and effect as a judgment when entered in the judgment docket and lien index. The collection services center shall disburse the payments pursuant to the order and enter the disbursements in a record book. If payments are not made as ordered, the child support recovery unit shall certify a default to the court and the court may, on its own motion, proceed under section 598.22 or 598.23. An order entered under this subsection may be modified only in accordance with the guidelines prescribed under section 598.21, subsection 8.

2. For an individual served by the department of human services under section 234.35, subsection 3, the department shall determine the obligation of the individual's parent or guardian in accordance with the child support guidelines prescribed under section 598.21, subsection 4. However, the department may adjust the prescribed obligation for expenses related to goals and objectives of a case permanency plan as defined under section 237.15. An obligation determined under this subsection may be modified only in accordance with conditions under section 598.21, subsection 8.

89 Acts, ch 166, §1 HF 403  
1989 rewrite takes effect October 12, 1989  
Section stricken and rewritten

## CHAPTER 235

### CHILD WELFARE

Child custody and visitation issues; mandatory mediation; pilot program in 1990 and 1991;  
89 Acts, ch 165 HF 20

#### **235.3 Powers and duties of administrator.**

The administrator shall:

1. Plan and supervise all public child welfare services and activities within the state as provided by this chapter.

2. Make such reports and obtain and furnish such information from time to time as may be necessary to permit co-operation by the state division with the United States children's bureau, the social security board, or any other federal agency which is now or may hereafter be charged with any duty regarding child care or child welfare services.

3. Adopt rules as necessary or advisable for the supervision of the private child-caring agencies or their officers which the administrator is empowered to license and supervise.

4. Supervise private institutions for the care of dependent, neglected, and delinquent children, and make reports regarding the institutions.

5. Designate and approve the private and county institutions within the state to which neglected, dependent and delinquent children may be legally committed and to have supervision of the care of children committed thereto, and the right of visitation and inspection of said institutions at all times.

6. Receive and keep on file annual reports from all institutions to which children subject to the jurisdiction of the juvenile court are committed; compile statistics regarding juvenile delinquency, make reports regarding juvenile delinquency, and study prevention and cure of juvenile delinquency.

7. Require and receive from the clerks of the courts of record within the state duplicates of the findings of the courts upon petitions for adoption, and keep records and compile statistics regarding adoptions.

8. License and inspect maternity hospitals, and private child-placing agencies; make reports regarding them and revoke such licenses.

9. Make such rules and regulations as may be necessary for the distribution and use of funds appropriated for child welfare services.

89 Acts, ch 19, §1 SF 128  
Subsection 6 amended

## CHAPTER 235A

### ABUSE OF CHILDREN

#### 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.

(5) To an administrator of a psychiatric medical institution for children licensed under chapter 135H.

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.

(5) To a probation or parole officer, juvenile court officer, or adult correctional officer having custody or supervision of, or conducting an investigation for a court or the board of parole regarding, a person named in a report as a victim of child abuse or as having abused a child.

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 "e", subparagraph (2).

89 Acts, ch 65, §1 SF 129; 89 Acts, ch 283, §25 SF 540

Subsection 2, paragraph c, NEW subparagraph (5)

Subsection 2, paragraph d, NEW subparagraph (5)

### **235A.18 Sealing and expungement of child abuse information.**

1. Child abuse information relating to a particular case of suspected child abuse shall be sealed ten years after the receipt of the initial report of such abuse by the registry unless good cause be shown why the information should remain open to authorized access. If a subsequent report of a suspected case of child abuse involving the child named in the initial report as the victim of abuse or a person

named in such report as having abused a child is received by the registry within this ten-year period, the information shall be sealed ten years after receipt of the subsequent report unless good cause be shown why the information should remain open to authorized access.

2. Child abuse information which cannot be determined by a preponderance of the evidence to be founded or unfounded shall be expunged one year after the receipt of the initial report of abuse and child abuse information which is determined by a preponderance of the evidence to be unfounded shall be expunged six months after the receipt of the initial report of abuse, as a result of any of the following:

- a. The investigation of a report of suspected child abuse by the department.
- b. A successful appeal as provided in section 235A.19.
- c. A court finding by a juvenile or district court.

The juvenile or district court and county attorney shall expunge child abuse information upon notice from the registry.

3. However, if a correction of child abuse information is requested under section 235A.19 and the issue is not resolved at the end of the one-year or six-month period, the information shall be retained until the issue is resolved and if the child abuse information is not determined to be founded, the information shall be expunged at the appropriate time under subsection 2.

4. The registry, at least once a year, shall review and determine the current status of child abuse reports which are transmitted or made to the registry after July 1, 1974, which are at least one year old and in connection with which no investigatory report has been filed by the department of human services pursuant to section 232.71. If no such investigatory report has been filed, the registry shall request the department of human services to file a report. In the event a report is not filed within ninety days subsequent to such a request, the report and information relating thereto shall be sealed and remain sealed unless good cause be shown why the information should remain open to authorized access.

89 Acts, ch 230, §20 HF 690

Subsection 2, NEW unnumbered paragraph 2 (at end of subsection)

### **235A.19 Examination, requests for correction or expungement and appeal.**

1. Any person or that person's attorney shall have the right to examine child abuse information in the registry which refers to that person. The registry may prescribe reasonable hours and places of examination.

2. a. A person may file with the department within six months of the date of the notice of the results of an investigation required by section 232.71, subsection 7, a written statement to the effect that child abuse information referring to the person is in whole or in part erroneous, and may request a correction of that information or of the findings of the investigation report. The department shall provide the person with an opportunity for an evidentiary hearing pursuant to chapter 17A to correct the information or the findings, unless the department corrects the information or findings as requested. The department shall delay the expungement of information which is not determined to be founded until the conclusion of a proceeding to correct the information or findings. The department may defer the hearing until the conclusion of a pending juvenile or district court case relating to the information or findings.

b. The department shall not disclose any child abuse information until the conclusion of the proceeding to correct the information or findings, except as follows:

- (1) As necessary for the proceeding itself.
- (2) To the parties and attorneys involved in a judicial proceeding.
- (3) For the regulation of child care or child placement.
- (4) Pursuant to court order.

(5) To the subject of an investigation.

(6) For the care or treatment of a child named in a report as a victim of abuse.

3. The decision resulting from the hearing may be appealed to the district court of Polk county by the person requesting the correction or to the district court of the district in which the person resides. Immediately upon appeal the court shall order the department to file with the court a certified copy of the child abuse information. Appeal shall be taken in accordance with chapter 17A.

4. Upon the request of the appellant, the record and evidence in such cases shall be closed to all but the court and its officers, and access thereto shall be prohibited unless otherwise ordered by the court. The clerk shall maintain a separate docket for such actions. No person other than the appellant shall permit a copy of any of the testimony or pleadings or the substance thereof to be made available to any person other than a party to the action or the party's attorney. Violation of the provisions of this subsection shall be a public offense punishable under section 235A.21.

5. Whenever the registry corrects or eliminates information as requested or as ordered by the court, the registry shall advise all persons who have received the incorrect information of such fact. Upon application to the court and service of notice on the registry, any individual may request and obtain a list of all persons who have received child abuse information referring to the individual.

6. In the course of any proceeding provided for by this section, the identity of the person who reported the disputed information and the identity of any person who has been reported as having abused a child may be withheld upon a determination by the registry that disclosure of their identities would be detrimental to their interests.

89 Acts, ch 230, §21 HF 690  
Subsection 2 amended

## CHAPTER 235B

### ADULT ABUSE

#### 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. "*Individual employed as an outreach person*" means a natural person who, in the course of employment, makes regular contacts with dependent adults regarding available community resources.

6. 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.

7. 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, including but not limited to a volunteer, 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.23 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 and appropriate law enforcement agencies shall take any lawful action necessary or advisable for the protection of the dependent adult.

The department may request information from any person believed to have knowledge of a case of dependent adult abuse. The person, including but not limited to a county attorney, a law enforcement agency, a multidisciplinary team, a social services agency, or a person required to report suspected abuse under this subsection, shall provide the information and assist in the evaluation upon the request of the department.

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.

8. 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.

9. 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.

10. 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 7, 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.

11. 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.

12. 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.

89 Acts, ch 24, §2, 3 SF 105

Subsection 7, paragraph a, unnumbered paragraph 3 amended

Subsection 7, paragraph b amended

## CHAPTER 236

### DOMESTIC ABUSE

#### 236.2 Definitions.

For purposes of this chapter, unless a different meaning is clearly indicated by the context:

1. *"Department"* means the department of justice.
2. *"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.
3. *"Emergency shelter services"* include, but are not limited to, secure crisis shelters or housing for victims of domestic abuse.

4. *"Family or household members"* means spouses, persons cohabiting, parents, or other persons related by consanguinity or affinity, except children under eighteen.

5. *"Support services"* include, but are not limited to, legal services, counseling services, transportation services, child care services, and advocacy services.

89 Acts, ch 279, §2, 3 HF 700

Subsections renumbered to alphabetize and subsection 1 amended

Subsection 6 stricken

### **236.5 Disposition.**

Upon a finding that the defendant has engaged in domestic abuse:

1. The court may order that the plaintiff, the defendant, and the children who are members of the household receive professional counseling, 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.

89 Acts, ch 85, §1 SF 155

Subsection 1 amended

### **236.9 Domestic abuse information.**

Criminal justice agencies, as defined in section 692.1, shall collect and maintain information on incidents involving domestic abuse and shall provide the information to the department of public safety in the manner prescribed by the department of public safety. The department of public safety shall receive and

maintain the information, including information on the personal characteristics and identities of perpetrators and victims of domestic abuse. The department of public safety shall maintain the confidentiality of information which individually identifies perpetrators or victims of domestic abuse, except that the department of public safety may disseminate the identifying information to a criminal justice agency if necessary for the performance of the official duties of the agency.

The department of public safety may compile statistics and issue reports on domestic abuse in Iowa, provided individual identifying details of the domestic abuse are deleted. The statistics and reports may include nonidentifying information on the personal characteristics of perpetrators and victims. The department of public safety may request the cooperation of the department of justice in compiling the statistics and issuing the reports. The department of public safety may provide nonidentifying information on individual incidents of domestic abuse to persons conducting bona fide research, including but not limited to personnel of the department of justice.

89 Acts, ch 279, §4 HF 700  
Unnumbered paragraph 2 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 for you, the children who are members of the household, and the defendant.

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.

89 Acts, ch 85, §2 SF 155

Subsection 1, paragraph c, subparagraph (4) amended

### **236.15 Application for designation and funding as a provider of services for victims of domestic abuse.**

Upon receipt of state or federal funding designated for victims of domestic abuse by the department, a public or private nonprofit organization may apply to the department for designation and funding as a provider of emergency shelter services and support services to victims of domestic abuse. The application shall be submitted on a form prescribed by the department and shall include, but not be limited to, information regarding services to be provided, budget, and security measures.

89 Acts, ch 279, §5 HF 700

Section amended

### **236.16 Department powers and duties.**

1. The department shall:

a. Designate and award grants for existing and pilot programs pursuant to this chapter to provide emergency shelter services and support services to victims of domestic abuse.

b. Design and implement a uniform method of collecting data from domestic abuse organizations funded under this chapter.

2. The department shall consult and cooperate with all public and private agencies which may provide services to victims of domestic abuse, including but not limited to, legal services, social services, prospective employment opportunities, and unemployment benefits.

3. The department may accept, use, and dispose of contributions of money, services, and property made available by an agency or department of the state or federal government, or a private agency or individual.

89 Acts, ch 279, §6 HF 700

Section amended

**236.17 Advisory board—membership.** Repealed by 89 Acts, ch 279, §28. HF 700

**236.18 Duties of the board.** Repealed by 89 Acts, ch 279, §28. HF 700

## CHAPTER 236A

## CONFIDENTIAL COMMUNICATIONS—COUNSELORS AND VICTIMS

**236A.1 Victim counselor privilege.**

1. As used in this section:

a. "*Victim*" means a person who consults a victim counselor for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a violent crime committed against the person.

b. "*Victim counselor*" means a person who is engaged in a crime victim center, is certified as a counselor by the crime victim center, and is under the control of a direct services supervisor of a crime victim center, whose primary purpose is the rendering of advice, counseling, and assistance to the victims of crime. To qualify as a "*victim counselor*" under this section, the person must also have completed at least twenty hours of training provided by the center in which the person is engaged, by the Iowa organization of victim assistance, by the Iowa coalition against sexual abuse, or by the Iowa coalition against domestic violence, which shall include but not be limited to, the dynamics of victimization, substantive laws relating to violent crime, sexual assault, and domestic violence, crisis intervention techniques, communication skills, working with diverse populations, an overview of the state criminal justice system, information regarding pertinent hospital procedures, and information regarding state and community resources for victims of crime.

c. "*Crime victim center*" means any office, institution, agency, or crisis center offering assistance to victims of crime and their families through crisis intervention, accompaniment during medical and legal proceedings, and follow-up counseling.

d. "*Confidential communication*" means information shared between a crime victim and a victim counselor within the counseling relationship, and includes all information received by the counselor and any advice, report, or working paper given to or prepared by the counselor in the course of the counseling relationship with the victim.

Confidential information is confidential information which, so far as the victim is aware, is not disclosed to a third party with the exception of a person present in the consultation for the purpose of furthering the interest of the victim, a person to whom disclosure is reasonably necessary for the transmission of the information, or a person with whom disclosure is necessary for accomplishment of the purpose for which the counselor is consulted by the victim.

2. A victim counselor shall not be examined or required to give evidence in any civil or criminal proceeding as to any confidential communication made by a victim to the counselor, nor shall a clerk, secretary, stenographer, or any other employee who types or otherwise prepares or manages the confidential reports or working papers of a victim counselor be required to produce evidence of any such confidential communication, unless the victim waives this privilege in writing or disclosure of the information is compelled by a court pursuant to subsection 7. Under no circumstances shall the location of a crime victim center or the identity of the victim counselor be disclosed in any civil or criminal proceeding.

3. If a victim is deceased or has been declared to be incompetent, this privilege specified in subsection 2 may be waived by the guardian of the victim or by the personal representative of the victim's estate.

4. A minor may waive the privilege under this section unless, in the opinion of the court, the minor is incapable of knowingly and intelligently waiving the privilege, in which case the parent or guardian of the minor may waive the privilege on the minor's behalf if the parent or guardian is not the defendant and does not have such a relationship with the defendant that the parent or guardian has an interest in the outcome of the proceeding being favorable to the defendant.

5. The privilege under this section does not apply in matters of proof concerning the chain of custody of evidence, in matters of proof concerning the physical appearance of the victim at the time of the injury or the counselor's first contact with the victim after the injury, or where the counselor has reason to believe that the victim has given perjured testimony and the defendant or the state has made an offer of proof that perjury may have been committed.

6. The failure of a counselor to testify due to this section shall not give rise to an inference unfavorable to the cause of the state or the cause of the defendant.

7. Upon the motion of a party, accompanied by a written offer of proof, a court may compel disclosure of certain information if the court determines that all of the following conditions are met:

a. The information sought is relevant and material evidence of the facts and circumstances involved in an alleged criminal act which is the subject of a criminal proceeding.

b. The probative value of the information outweighs the harmful effect, if any, of disclosure on the victim, the counseling relationship, and the treatment services.

c. The information cannot be obtained by reasonable means from any other source.

8. In ruling on a motion under subsection 7, the court, or a different judge, if the motion was filed in a criminal proceeding to be tried to the court, shall adhere to the following procedure:

a. The court may require the counselor from whom disclosure is sought or the victim claiming the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the victim and any other persons the victim is willing to have present.

b. If the court determines that the information is privileged and not subject to compelled disclosure, the information shall not be disclosed by any person without the consent of the victim.

c. If the court determines that certain information may be subject to disclosure, as provided in subsection 7, the court shall so inform the party seeking the information and shall order a subsequent hearing out of the presence of the jury, if any, at which the parties shall be allowed to examine the counselor regarding the information which the court has determined may be subject to disclosure. The court may accept other evidence at that time.

d. At the conclusion of a hearing under paragraph "c", the court shall determine which information, if any, shall be disclosed and may enter an order describing the evidence which may be introduced by the moving party and prescribing the line of questioning which may be permitted. The moving party may then offer evidence pursuant to the court order. However, no victim counselor is subject to exclusion under Iowa rule of evidence 615.

9. This section does not relate to the admission of evidence of the victim's past sexual behavior which is strictly subject to Iowa rule of evidence 412.

89 Acts, ch 194, §2 HF 674  
Subsections 1, 2, and 7 amended

## CHAPTER 237

### CHILD FOSTER CARE FACILITIES

#### 237.3 Rules.

1. Except as otherwise provided by subsections 3 and 4, the administrator shall promulgate, after their adoption by the council on human services, and enforce in accordance with chapter 17A, administrative rules necessary to implement this chapter. Formulation of the rules shall include consultation with representatives

of child foster care providers, and other persons affected by this chapter. The rules shall encourage the provision of child foster care in a single-family, home environment, exempting the single-family, home facility from inappropriate rules.

2. Rules applicable to licensees shall include but are not limited to:
  - a. Types of facilities which include but are not limited to all of the following:
    - (1) A community residential facility.
    - (2) A community residential facility for mentally retarded children.
    - (3) A comprehensive residential facility for children.
    - (4) A comprehensive residential facility for mentally retarded children.
    - (5) A foster family home.
    - (6) A group living foster care facility.
  - b. The number, qualifications, character, and parenting ability of personnel necessary to assure the health, safety and welfare of children receiving child foster care.
  - c. Programs for education and in-service training of personnel.
  - d. The physical environment of a facility.
  - e. Policies for intake, assessment, admission and discharge.
  - f. Housing, health, safety, and medical-care policies for children receiving child foster care.
  - g. The adequacy of programs available to children receiving child foster care provided by agencies, including but not limited to:
    - (1) Dietary services.
    - (2) Social services.
    - (3) Activity programs.
    - (4) Behavior management procedures.
    - (5) Educational programs, including special education as defined in section 281.2, subsection 2 where appropriate, which are approved by the state board of education. The department shall not promulgate rules which regulate individual licensees in the subject areas enumerated in this paragraph.
  - h. Policies for involvement of natural parents.
    - i. Records a licensee is required to keep, and reports a licensee is required to make to the administrator.
    - j. Prior to the licensing of an individual as a foster family home, a required, written social assessment of the quality of the living situation in the home of the individual, and a required compilation of personal references for the individual other than those references given by the individual.
3. Rules governing fire safety in facilities with child foster care provided by agencies shall be promulgated by the state fire marshal pursuant to section 100.1, subsection 5 after consultation with the administrator.
4. Rules governing sanitation, water and waste disposal standards for facilities shall be promulgated by the Iowa department of public health pursuant to section 135.11, subsection 13 after consultation with the administrator.
5. In case of a conflict between rules promulgated pursuant to subsections 3 and 4 and local rules, the more stringent requirement applies.
6. Rules of the department shall not prohibit the licensing, as foster family homes, of individuals who are departmental employees not directly engaged in the administration of the child foster care program pursuant to this chapter.

89 Acts, ch 283, §26 SF 540

Subsection 2, paragraph a stricken and rewritten

### 237.8 Personnel.

1. A person shall not be allowed to provide services in a facility if the person has a disease which is transmissible to other persons through required contact in the workplace, which presents a significant risk of infecting other persons, which

presents a substantial possibility of harming other persons, or for which no reasonable accommodation can eliminate the risk of infecting other persons.

2. A person who has been convicted of a crime under a law of any state 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 abuses committed by the person involved.

89 Acts, ch 283, §27 SF 540  
Subsection 1 stricken and rewritten

### 237.13 Foster home insurance fund.

1. For the purposes of this section, "*foster home*" means either of the following:  
a. An individual, as defined in section 237.1, subsection 7, who is licensed to provide child foster care and shall also be known as a "*licensed foster home*".

b. A guardian appointed on a voluntary petition of a ward pursuant to section 633.557, or a conservator appointed on a voluntary petition of a ward pursuant to section 633.572, provided the ward has an income that does not exceed one hundred fifty percent of the current federal office of management and budget poverty guidelines and who does not have resources in excess of the criteria for resources under the federal supplemental security income program. However, the ward's ownership of one residence and one vehicle shall not be considered in determining resources.

2. The foster home insurance fund is created within the office of the treasurer of state to be administered by the department of human services. The fund consists of all moneys appropriated by the general assembly for deposit in the fund. The general fund of the state is not liable for claims presented against the fund. The department may contract with another state agency, or private organization, to perform the administrative functions necessary to carry out this section.

3. Except as provided in this section, the fund shall pay, on behalf of each licensed foster home, any valid and approved claim of foster children, their parents, guardians, or guardians ad litem, for damages arising from the foster care relationship and the provision of foster care services. The fund shall also reimburse licensed foster homes for property damage or bodily injury, as a result of the activities of the foster child, and reasonable and necessary legal fees incurred in defense of civil claims filed pursuant to subsection 7, paragraph "d", and any judgments awarded as a result of such claims.

4. The fund is not liable for any of the following:

a. A loss arising out of a foster parent's dishonest, fraudulent, criminal, or intentional act.

b. An occurrence which does not arise from the foster care relationship.

c. A bodily injury arising out of the operation or use of a motor vehicle, aircraft, recreational vehicle, or watercraft owned, operated by, rented, leased, or loaned to, a foster parent.

d. A loss arising out of a foster parent's lascivious acts, indecent contact, or sexual activity, as defined in chapters 702 and 709. Notwithstanding any definition to the contrary in chapters 702 and 709, for purposes of this subsection a child is a person under the age of eighteen.

e. A loss or damage arising out of occurrences prior to July 1, 1988.

f. Exemplary or punitive damages.

g. Any claim for which compensation has been provided by, or is available from, any other source including the child's own funds.

h. The liability of a foster parent due solely to the foster parent's failure to obtain automobile or homeowner's insurance.

i. A loss or damage arising out of conduct which is in violation of administrative rules.

5. Except as provided in this section, the fund shall pay, on behalf of a guardian or conservator, the reasonable and necessary legal costs incurred in defending against a suit filed by a ward or the ward's representative and the damages awarded as a result of the suit, so long as it is determined that the guardian or conservator acted in good faith in the performance of their duties. A payment shall not be made if there is evidence of intentional misconduct or a knowing violation of the law by the guardian or conservator, including, but not limited to, failure to carry out the responsibilities required under sections 633.633 through 633.635 and 633.641 through 633.650.

6. The fund is not liable for the first one hundred fifty dollars of any claim based on a single occurrence. Claims may not be aggregated or accumulated to avoid payment of this deductible. The fund is not liable for damages in excess of three hundred thousand dollars for a single foster home for all claims arising out of one or more occurrences during a calendar year.

7. Procedures for claims against the fund:

a. A claim against the fund shall be filed in accordance with the claims procedures and on forms prescribed by the department of human services.

b. A claim shall be submitted to the fund within the applicable period of limitations for the appropriate civil action underlying the claim. If a claim is not submitted to the fund within the applicable time, the claim shall be rejected.

c. The department shall issue a decision on a claim within one hundred eighty days of its presentation.

d. A person shall not bring a civil action against a foster parent for which the fund may be liable unless that person has first filed a claim against the fund and the claim has been rejected, or the claim has been filed, approved, and paid in part, and damages in excess of the payment are claimed.

8. All processing of decisions and reports, payment of claims, and other administrative actions relating to the fund shall be conducted by the department of human services.

9. The department of human services shall adopt rules, pursuant to chapter 17A, to carry out the provisions of this section.

89 Acts, ch 178, §4 HF 585  
Subsection 5 amended

### 237.15 Definitions.

For the purposes of this division unless otherwise defined:

1. "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.

e. The efforts to place the child with a relative.

f. The rationale for an out-of-state placement, and the efforts to prevent such placement, if the child has been placed out of state.

g. Time frames to meet the stated permanency goal and short-term objectives.

2. "Child receiving foster care" means a child defined in section 234.1 whose foster care placement is the financial responsibility of the state pursuant to section 234.35 or 234.36, who is under the guardianship of the department, or who has been involuntarily hospitalized for mental illness pursuant to chapter 229.

3. "Family" means the social unit consisting of the child and the biological or adoptive parent, stepparent, brother, sister, stepbrother, stepsister, and grandparent of the child.

4. "Local board" means a local foster care review board created pursuant to section 237.19.

5. "Person or court responsible for the child" means the department, including but not limited to the department of human services, agency, or individual who is the guardian of a child by court order issued by the juvenile or district court and has the responsibility of the care of the child, or the court having jurisdiction over the child.

6. "State board" means the state foster care review board created pursuant to section 237.16.

89 Acts, ch 296, §22 SF 141

Subsections renumbered to alphabetize, and subsection 5 amended

### **237.16 State foster care review board.**

The state foster care review board is created within the department of inspections and appeals. The state board consists of seven members appointed by the governor, subject to confirmation by the senate and directly responsible to the governor. The appointment is for a term of four years which begins and ends as provided in section 69.19. Vacancies on the state board shall be filled in the same manner as original appointments are made.

The members of the state board shall annually select a chairperson, vice chairperson, and other officers the members deem necessary. The members are entitled to receive reimbursement for actual and necessary expenses incurred in the performance of their duties. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. The state board shall meet at least twice a year.

An employee of the department or of the department of inspections and appeals, an employee of a child-placing agency, an employee of an agency with which the department contracts for services for children under foster care, a foster parent providing foster care, or an employee of the district court is not eligible to serve on the state board.

89 Acts, ch 296, §23 SF 141

Unnumbered paragraph 1 amended

### **237.20 Local board duties.**

A local board shall:

1. Review every six months the case of each child receiving foster care assigned to the local board by the state board to determine whether satisfactory progress is being made toward the goals of the case permanency plan pursuant to section 237.22. As much as is possible, review shall be conducted immediately prior to court reviews of the case.

During each six month review, the agency responsible for the placement of the child shall attend the review and the local board shall review all of the following:

a. The past, current, and future status of the child and placement as shown through the case permanency plan and case progress reports submitted by the agency responsible for the placement of the child and other information the board may require.

b. The efforts of the agency responsible for the placement of the child to locate and provide services to the biological or adoptive parents of the child.

c. The efforts of the agency responsible for the placement of the child to facilitate the return of the child to the home or to find an alternative permanent placement other than foster care if reunion with the parent or previous custodian is not feasible. The agency shall report to the board all factors which either favor or mitigate against a decision or alternative with regard to these matters.

d. Any problems, solutions, or alternatives which may be capable of investigation, or other matters with regard to the child which the agency responsible for the placement of the child or the board feels should be investigated with regard to the best interests of the state or of the child.

The review shall include issues pertaining to the permanency plan and shall not include issues that do not pertain to the permanency plan. Each review shall include written testimony of any person notified pursuant to subsection 4, and may include oral testimony from those persons when determined to be relevant and material to the child's placement. Oral testimony may, upon the request of the testifier or upon motion of the local board, be given in a private setting when to do so would facilitate the presentation of evidence. Local board questions shall pertain to the permanency plan and shall not include issues that do not pertain to the permanency plan.

A person who gives oral testimony has the right to representation by counsel at the review.

An agency or individual providing services to the child shall submit testimony as requested by the board. The testimony may be written or oral, or may be a tape recorded telephone call. Written testimony from other interested parties may also be considered by the board in its review.

2. Submit to the appropriate court within fifteen days after the review under subsection 1, the findings and recommendations of the review. The local board shall ensure that the most recent report is available for a court hearing. The report to the court shall include information regarding the permanency plan and the progress in attaining the permanency goals. The report shall not include issues that do not pertain to the permanency plan. The findings and recommendations shall include the proposed date of the next review by the local board. The local board shall notify the persons specified in subsection 4 of the findings and recommendations.

3. Encourage placement of the child in the most appropriate setting reflecting the provisions of chapter 232.

4. Notify the following persons at least ten days before the review of a case of a child receiving foster care:

- a. The person, court, or agency responsible for the child.
- b. The parent or parents of the child unless termination of parental rights has occurred pursuant to section 232.117.
- c. The foster care provider of the child.
- d. The child receiving foster care if the child is fourteen years of age or older. The child shall be informed of the review's purpose and procedure, and of the right to have a guardian ad litem present.
- e. The guardian ad litem of the foster child. The guardian ad litem shall be eligible for compensation through section 232.141, subsection 1, paragraph "b".
- f. The department.
- g. The county attorney.

The notice shall include a statement that the person notified has the right to representation by counsel at the review.

<sup>89</sup> Acts, ch 64, §1-3 SF 110

Subsection 1, unnumbered paragraphs 2 and 5 amended

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 and to the child's family shall be provided to a local board or the state board by the department or child-care agency receiving purchase-of-service funds from the department 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. If confidential information and records are distributed to individual members in advance of a meeting of the state board or a local board, the information and records shall be clearly identified as confidential and the members shall take appropriate steps to prevent unauthorized disclosure.

3. Members of the state board and local boards and the employees of the department and the department of inspections and appeals are subject to standards of confidentiality pursuant to sections 217.30, 228.6, subsection 1, 235A.15, and 600.16. Members of the state and local boards and employees of the department and the department of inspections and appeals who disclose information or records of the board or department, other than as provided in subsection 2, are guilty of a simple misdemeanor.

89 Acts, ch 64, §4 SF 110  
Subsection 2 amended

## CHAPTER 237A

### CHILD DAY CARE FACILITIES

#### 237A.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. "*Director*" means the director of human services.
2. "*Department*" means the department of human services.
3. "*Administrator*" means the administrator of the division designated by the director 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 accredited by the department of education or the state board of regents, except a program provided under section 279.49.
  - b. A church-related instructional program of not more than one day per week.
  - c. Short-term classes held between school terms.
  - d. A child care center for sick children operated as part of a pediatrics unit in a hospital licensed by the department of inspections and appeals pursuant to chapter 135B.

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.

9. 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.

89 Acts, ch 206, §3 SF 223

Subsection 7, paragraph a amended

### **237A.15 Application for funds.**

The department shall:

1. Prescribe forms for use by licensed or registered facilities in applying to their respective county boards for funds appropriated by the general assembly.

2. Establish a procedure by which a licensed or registered facility aggrieved by a decision of a county board under section 237A.17 may appeal the decision to the director or the director's designee, however, the judgment of the county board on the merits of an application shall not be overturned in the absence of a determination that the county board has misinterpreted any of the provisions of this chapter, has acted arbitrarily or capriciously, or both.

3. Seek to obtain from the federal government any funds which may be available to this state to pay any part of the cost of implementing or administering this chapter.

4. Adopt rules relating to the purchase of child day care services which authorize payment for up to four days per month for days an individual child is not in attendance at the child day care facility.

89 Acts, ch 283, §28 SF 540

NEW subsection 4

### **237A.22 Duties of state day care advisory committee.**

The state day care advisory committee shall:

1. Consult with and make recommendations to the department in the promulgation of rules under this chapter.

2. Recommend improvements in the licensing and registration of facilities.

3. Advise the department on licensing policy, planning, and priorities.

4. Advise and provide technical services to the director of the department of education or the director's designee, upon request, relating to prekindergarten, kindergarten, and before and after school programming and facilities.

89 Acts, ch 206, §4 SF 223  
NEW subsection 4

## CHAPTER 242

### TRAINING SCHOOL

#### 242.17 Cost of care.

If a child receives unearned income, the department shall reserve a portion of the unearned income for the use of the child as a personal allowance and apply the remaining portion to the cost of the child's custody, care, and maintenance provided pursuant to this chapter.

89 Acts, ch 283, §29 SF 540  
NEW section

## CHAPTER 244

### IOWA JUVENILE HOME

#### 244.16 Cost of care.

If a child receives unearned income, the department shall reserve a portion of the unearned income for the use of the child as a personal allowance and apply the remaining portion equally to the state and county liability for the cost of the child's support and maintenance provided pursuant to this chapter.

89 Acts, ch 283, §30 SF 540  
NEW section

## CHAPTER 246

### IOWA DEPARTMENT OF CORRECTIONS

#### 246.310 Canteens.

The director may maintain a canteen at any institution under the director's jurisdiction for the sale to persons confined in the institution of items such as toilet articles, candy, tobacco products, notions, and other sundries, and may provide the necessary facilities, equipment, personnel, and merchandise for the canteen. The director shall specify the items to be sold in the canteen. The department may establish and maintain a permanent operating fund for each canteen. The fund shall consist of the receipts from the sale of commodities at the canteen and any interest earned on the fund. Any money in the fund over the amount needed to do normal business transactions, and to reimburse any accounts which have subsidized the canteen fund, shall be considered profit. This money may remain in the canteen fund and be used for any purchase which the superintendent approves that will directly and collectively benefit the inmates of the institution.

89 Acts, ch 142, §1 HF 432  
Section amended

### 246.503 Transfers—mentally ill.

1. The director may transfer at the expense of the department an inmate of one institution to another institution under the director's control if the director is satisfied that the transfer is in the best interests of the institutions or inmates.

The director may transfer at the expense of the department an inmate under the director's jurisdiction from any institution supervised by the director to another institution under the control of an administrator of a division of the department of human services with the consent and approval of the administrator and may transfer an inmate to any other institution for mental or physical examination or treatment retaining jurisdiction over the inmate when so transferred.

If the juvenile court waives its jurisdiction over a child over thirteen and under eighteen years of age pursuant to section 232.45 so that the child may be prosecuted as an adult and if the child is convicted of a public offense in the district court and committed to the custody of the director under section 901.7, the director may request transfer of the child to the state training school under this section. If the administrator of a division of the department of human services consents and approves the transfer, the child may be retained in temporary custody by the state training school until attaining the age of eighteen, at which time the child shall be returned to the custody of the director of the department of corrections to serve the remainder of the sentence imposed by the district court. If the child becomes a security risk or becomes a danger to other residents of the state training school at any time before reaching eighteen years of age, the administrator of the division of the department of human services may immediately return the child to the custody of the director of the department of corrections to serve the remainder of the sentence.

2. When the director has cause to believe that an inmate in a state correctional institution is mentally ill, the Iowa department of corrections may cause the inmate to be transferred to the Iowa medical and classification center for examination, diagnosis, or treatment. The inmate shall be confined at that institution or a state hospital for the mentally ill until the expiration of the inmate's sentence or until the inmate is pronounced in good mental health. If the inmate is pronounced in good mental health before the expiration of the inmate's sentence, the inmate shall be returned to the state correctional institution until the expiration of the inmate's sentence.

3. When the director has reason to believe that a prisoner in a state correctional institution, whose sentence has expired, is mentally ill, the director shall cause examination to be made of the prisoner by competent physicians who shall certify to the director whether the prisoner is in good mental health or mentally ill. The director may make further investigation and if satisfied that the prisoner is mentally ill, the director may cause the prisoner to be transferred to one of the hospitals for the mentally ill, or may order the prisoner to be confined in the Iowa medical and classification center.

89 Acts, ch 80, §1 SF 203  
Subsection 4 stricken

### 246.508 Property of inmate.

The superintendent of each institution shall receive and care for any property an inmate may possess on the inmate's person upon entering the institution, and on the discharge of the inmate, return the property to the inmate or the inmate's legal representatives, unless the property has been previously disposed of according to the inmate's written designation or policies prescribed by the board. The superintendent may place an inmate's money at interest, keeping an account of the money and returning the remaining money and interest upon discharge.

Upon the death of an inmate, the superintendent of the institution shall immediately take possession of the decedent's property left at the institution and shall deliver the property to the person designated by the inmate to be contacted

in case of an emergency. However, if the property left by the decedent cannot be delivered to the designated person, delivery may be made to the surviving spouse or an heir of the decedent. If the decedent's property cannot be delivered to the designated person and no surviving spouse or heir is known, the superintendent shall deliver the property to the treasurer of state for disposition as unclaimed property pursuant to chapter 556, after deducting expenses incurred in disposing of the decedent's body or property.

89 Acts, ch 46, §1 SF 339  
Unnumbered paragraph 2 amended

#### **246.706 Revolving farm fund.**

A revolving farm fund is created in the state treasury in which the department shall deposit receipts from agricultural products, nursery stock, agricultural land rentals, and the sale of livestock. However, before any agricultural operation is phased out, the department which proposes to discontinue this operation shall notify the governor, chairpersons and ranking members of the house and senate appropriations committees, and cochairpersons and ranking members of the subcommittee in the senate and house of representatives which has handled the appropriation for this department in the past session of the legislature. Before the department sells farmland under the control of the department, the director shall notify the governor, chairpersons and ranking members of the house and senate appropriations committees, and cochairpersons and ranking members of the joint appropriations subcommittee that handled the appropriation for the department during the past legislative session. The department may pay from the fund for the operation, maintenance, and improvement of farms and agricultural or nursery property under the control of the department. A purchase order for five thousand dollars or less payable from the fund is exempt from the general purchasing requirements of chapter 18. Notwithstanding section 8.33, unencumbered or unobligated receipts in the revolving farm fund at the end of a fiscal year shall not revert to the general fund of the state and the investment proceeds earned from the balance of the fund shall be credited to the fund and used for the purposes provided for in this section.

Notwithstanding section 8.36, the department shall annually prepare a financial statement covering the previous calendar year to provide for an accounting of the funds in the revolving farm fund. The financial statement shall be filed with the legislative fiscal bureau on or before February 1 each year.

As used in this section, "department" means the Iowa department of corrections and the Iowa department of human services.

The farm operations administrator appointed under section 246.302 shall perform the functions described under section 246.302 for agricultural operations on property of the Iowa department of human services.

The Iowa department of human services shall enter into an agreement under chapter 28D with the Iowa department of corrections to implement this section.

89 Acts, ch 9, §1 HF 190  
Unnumbered paragraph 2 amended

## **CHAPTER 248A**

### **REPRIEVES, PARDONS, COMMUTATIONS, REMISSIONS, AND RESTORATIONS OF RIGHTS**

#### **248A.7 Rights not restorable.**

Notwithstanding any other provision of this chapter, a person who has been convicted of a forcible felony, a felony violation of chapter 204 involving a firearm,

or a felony violation of chapter 724 shall not have the person's rights of citizenship restored to the extent of allowing the person to receive, transport, or possess firearms.

89 Acts, ch 316, §21 HF 772  
NEW section

## CHAPTER 249A

### MEDICAL ASSISTANCE

Expanded coverage for specialized psychiatric medical institutions for children; rules; reimbursement rates;  
88 Acts, ch 1249, §21; 89 Acts, ch 283, §33, 34  
See also ch 135H

#### 249A.2 Definitions.

As used in this chapter:

1. "*Additional medical assistance*" means payment of all or part of the costs of any or all of the care and services authorized to be provided by Title XIX of the federal Social Security Act, section 1905(a), paragraphs (6), (7), (9) to (16), and (18), as codified in 42 U.S.C. sec. 1396d(a), pars. (6), (7), (9) to (16), and (18).

2. "*County board*" means the county board of social welfare appointed pursuant to section 234.9.

3. "*Department*" means the department of human services.

4. "*Director*" means the director of human services.

5. "*Discretionary medical assistance*" means medical assistance or additional medical assistance provided to individuals whose income and resources are in excess of eligibility limitations but are insufficient to meet all of the costs of necessary medical care and services, provided that if the assistance includes services in institutions for mental diseases or intermediate care facility services for the mentally retarded, or both, for any group of such individuals, the assistance also includes for all covered groups of such individuals at least the care and services enumerated in Title XIX of the federal Social Security Act, section 1905(a), paragraphs (1) through (5), and (17), as codified in 42 U.S.C. sec. 1396d(a), pars. (1) through (5), and (17), or any seven of the care and services enumerated in Title XIX of the federal Social Security Act, section 1905(a), paragraphs (1) through (7) and (9) through (18), as codified in 42 U.S.C. sec. 1396d(a), pars. (1) through (7), and (9) through (18).

6. "*Medical assistance*" means payment of all or part of the costs of the care and services required to be provided by Title XIX of the federal Social Security Act, section 1905(a), paragraphs (1) through (5), and (17), as codified in 42 U.S.C. sec. 1396d(a), pars. (1) through (5), and (17).

7. "*Medicare cost-sharing*" means payment under the medical assistance program of a premium, a coinsurance amount, or a deductible amount for federal medicare as required by Title XIX of the federal Social Security Act, section 1905(p)(3), as codified in 42 U.S.C. §1396d(p)(3).

8. "*Recipient*" means a person who receives medical assistance under this chapter.

89 Acts, ch 104, §1 SF 117  
NEW subsection 8

#### 249A.3 Eligibility.

The extent of and the limitations upon eligibility for assistance under this chapter is prescribed by this section, subject to federal requirements, and by laws appropriating funds for assistance provided pursuant to this chapter.

1. Medical assistance shall be provided to, or on behalf of, any individual or family residing in the state of Iowa, including those residents who are temporarily absent from the state, who:

a. Is a recipient of federal supplementary security income or who would be eligible for federal supplemental security income if living in their own home.

b. Is a recipient of aid to families with dependent children payments under chapter 239 or is an individual who would be eligible for unborn child payments under the aid to families with dependent children program, as authorized by Title IV-A of the federal Social Security Act, if the aid to families with dependent children program under chapter 239 provided for unborn child payments during the entire pregnancy.

c. Was a recipient of one of the previous categorical assistance programs as of December 31, 1973, and would continue to meet the eligibility requirements for one of the previous categorical assistance programs as the requirements existed on that date.

d. Is a child up to one year of age who was born on or after October 1, 1984 to a woman receiving medical assistance on the date of the child's birth, who continues to be a member of the mother's household, and whose mother continues to receive medical assistance.

e. Is a pregnant woman whose pregnancy has been medically verified and who qualifies under either of the following:

(1) The woman would be eligible for a cash payment under the aid to dependent children program, or under an aid to dependent children, unemployed parent program, under chapter 239, if the child were born and living with the woman in the month of payment.

(2) The woman meets the income and resource requirements of the aid to dependent children program under chapter 239, provided the unborn child is considered a member of the household, and the woman's family is treated as though deprivation exists.

f. Is a child who is less than six years of age and who meets the income and resource requirements of the aid to dependent children program under chapter 239.

g. Is a child who is less than eight years of age as prescribed by the federal Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203 §4101, whose income is not more than one hundred percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

h. Is a woman who, while pregnant, meets eligibility requirements for assistance under the federal Social Security Act, §1902(l) and continues to meet the requirements except for income. The woman is eligible to receive assistance until sixty days after the date pregnancy ends.

i. Is a pregnant woman who is determined to be presumptively eligible by a health care provider qualified under the federal Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, §9407. The woman is eligible for ambulatory prenatal care assistance for a period of fourteen days following the presumptive eligibility determination. If the department receives the woman's medical assistance application within the fourteen-day period, the woman is eligible for ambulatory prenatal care assistance for forty-five days from the date presumptive eligibility was determined or until the department actually determines the woman's eligibility for medical assistance, whichever occurs first. The costs of services provided during the presumptive eligibility period shall be paid by the medical assistance program for those persons who are determined to be ineligible through the regular eligibility determination process.

j. Is a pregnant woman or infant less than one year of age whose income does not exceed the federally prescribed percentage of the poverty level in accordance with the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360, §302.

k. Is a pregnant woman or infant whose income is more than the limit prescribed under the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360 §302, but not more than one hundred eighty-five percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

l. Is a child for whom adoption assistance or foster care maintenance payments are paid under Title IV-E of the federal Social Security Act.

m. Is an individual or family who is ineligible for aid to dependent children under chapter 239 because of requirements that do not apply under Title XIX of the federal Social Security Act.

n. Was a federal supplemental security income or a state supplementary assistance recipient, as defined by section 249.1, and a recipient of federal social security benefits at one time since August 1, 1977, and would be eligible for federal supplemental security income or state supplementary assistance but for the increases due to the cost of living in federal social security benefits since the last date of concurrent eligibility.

a. Is an individual whose spouse is deceased and who is ineligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, due to the elimination of the actuarial reduction formula for federal social security benefits under the federal Social Security Act and subsequent cost of living increases.

p. Is an individual who is at least sixty years of age and is ineligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, because of receipt of social security widow or widower benefits and is not eligible for federal Medicare, part A coverage.

q. Is a disabled individual, and is at least eighteen years of age, who receives parental social security benefits under the federal Social Security Act and is not eligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, because of the receipt of the social security benefits.

2. Medical assistance may also, within the limits of available funds and in accordance with section 249A.4, subsections 1 and 2, be provided to, or on behalf of, other individuals and families who are not excluded under subsection 4 of this section and whose incomes and resources are insufficient to meet the cost of necessary medical care and services in accordance with the following order of priorities:

a. Individuals who are receiving care in a hospital or in a basic nursing home, intermediate nursing home, skilled nursing home or extended care facility, as defined by section 135C.1, and who meet all eligibility requirements for federal supplementary security income except that their income exceeds the allowable maximum therefor, but whose income is not in excess of the maximum established by subsection 4 for eligibility for medical assistance and is insufficient to meet the full cost of their care in the hospital or health care facility on the basis of standards established by the department.

b. Individuals under twenty-one years of age living in a licensed foster home, or in a private home pursuant to a subsidized adoption arrangement, for whom the department accepts financial responsibility in whole or in part and who are not eligible under subsection 1.

c. Individuals who are receiving care in an institution for mental diseases, and who are under twenty-one years of age and whose income and resources are such that they are eligible for aid to dependent children under chapter 239, or who are sixty-five years of age or older and who meet the conditions for eligibility in paragraph "a" of this subsection.

d. Individuals and families whose incomes and resources are such that they are eligible for federal supplementary security income or aid to dependent children, but who are not actually receiving such public assistance.

e. Individuals who are receiving state supplementary assistance as defined by section 249.1 or other persons whose needs are considered in computing the recipient's assistance grant.

f. Individuals under twenty-one years of age who qualify on a financial basis for, but who are otherwise ineligible to receive aid to dependent children.

g. Individuals and families who would be eligible under subsection 1 or 2 of this section except for excess income or resources, or a reasonable category of those individuals and families.

h. Individuals who have attained the age of twenty-one but have not yet attained the age of sixty-five who qualify on a financial basis for, but who are otherwise ineligible to receive, federal supplementary security income or aid to dependent children.

Notwithstanding the provisions of this subsection establishing priorities for individuals and families to receive medical assistance, the department may determine within the priorities listed in this subsection which persons shall receive medical assistance based on income levels established by the department, subject to the limitations provided in subsection 4.

3. Additional medical assistance may, within the limits of available funds and in accordance with section 249A.4, subsections 1 and 2, be provided to, or on behalf of, either:

a. Only those individuals and families described in subsection 1 of this section; or

b. Those individuals and families described in both subsections 1 and 2.

4. Discretionary medical assistance, within the limits of available funds and in accordance with section 249A.4, subsections 1 and 2, may be provided to or on behalf of those individuals and families described in subsection 2, paragraph "g" of this section.

5. Assistance shall not be granted under this chapter to:

a. An individual or family whose income, considered to be available to the individual or family, exceeds federally prescribed limitations.

b. An individual or family whose resources, considered to be available to the individual or family, exceed federally prescribed limitations.

6. In determining the eligibility of an individual for medical assistance under this chapter, for resources transferred to the individual's spouse before October 1, 1989, or to a person other than the individual's spouse before July 1, 1989, the department shall include, as resources still available to the individual, those nonexempt resources or interests in resources, owned by the individual within the preceding twenty-four months, which the individual gave away or sold at less than fair market value for the purpose of establishing eligibility for medical assistance under this chapter.

a. A transaction described in this subsection is presumed to have been for the purpose of establishing eligibility for medical assistance under this chapter unless the individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.

b. The value of a resource or an interest in a resource in determining eligibility under this subsection is the fair market value of the resource or interest at the time of the transaction less the amount of any compensation received.

c. If a transaction described in this subsection results in uncompensated value exceeding twelve thousand dollars, the department shall provide by rule for a period of ineligibility which exceeds twenty-four months and has a reasonable relationship to the uncompensated value above twelve thousand dollars.

7. In determining the eligibility of an individual for medical assistance under this chapter, the department shall consider resources transferred to the individual's spouse on or after October 1, 1989, or to a person other than the individual's spouse on or after July 1, 1989, as provided under the federal Social Security Act, section 1917(c), as codified in 42 U.S.C. §1396p(c), as amended.

8. Medicare cost sharing shall be provided to or on behalf of an individual who is a resident of the state or a resident who is temporarily absent from the state and is a qualified Medicare beneficiary as defined under Title XIX of the federal Social Security Act, section 1905(p)(1), as codified in 42 U.S.C. §1396d(p)(1).

89 Acts, ch 104, §2-4 SF 117; 89 Acts, ch 304, §202 SF 538

Appropriation for grant to a statewide charitable organization to administer program of primary health care and preventive services to uninsured children, conditions; evaluation by public health department; 89 Acts, ch 304, §1108, 1114 SF 538

Unnumbered paragraph 1 amended

Subsection 1, NEW paragraphs e-q

Subsection 6, unnumbered paragraph 1 amended

NEW subsections 7 and 8

### **249A.4 Duties of director.**

The director shall be responsible for the effective and impartial administration of this chapter and shall, in accordance with the standards and priorities established by this chapter, by applicable federal law, by the regulations and directives issued pursuant to federal law, and by the state plan approved in accordance with federal law, make rules, establish policies, and prescribe procedures to implement this chapter. Without limiting the generality of the foregoing delegation of authority, the director is hereby specifically empowered and directed to:

1. Determine the greatest amount, duration, and scope of assistance which may be provided, and the broadest range of eligible individuals to whom assistance may effectively be provided, under this chapter within the limitations of available funds. In so doing, the director shall at least every six months evaluate the scope of the program currently being provided under this chapter, project the probable cost of continuing a like program, compare such probable cost with the remaining balance of the state appropriation made for payment of assistance under this chapter during the current appropriation period, and expand or curtail the program accordingly; provided that reimbursement for medical and health services shall be made in accordance with subsection 9. After each evaluation of the scope of the program, the director shall report to the general assembly through the legislative council or in another manner as the general assembly may by resolution direct.

2. Have authority to determine, when available funds permit expansion of the program provided under this chapter beyond the minimum scope required by subsection 1 of this section, whether priority shall be given to providing additional medical assistance to the individuals and families described in section 249A.3, subsection 1, or to providing medical assistance to some or all of the individuals and families described in section 249A.3, subsection 2, unless the general assembly has by law made such determination.

3. Have authority to provide for payment under this chapter of assistance rendered to any applicant prior to the date the application is filed.

4. Have authority to contract with any corporation authorized to engage in this state in insuring groups or individuals for all or part of the cost of medical, hospital, or other health care or with any corporation maintaining and operating a medical, hospital, or health service prepayment plan under the provisions of chapter 514 or with any health maintenance organization authorized to operate in this state, for any or all of the benefits to which any recipients are entitled under this chapter to be provided by such corporation or health maintenance organization on a prepaid individual or group basis.

5. May, to the extent possible, contract with a private organization or organizations whereby such organization will handle the processing of and the payment of claims for services rendered under the provisions of this chapter and under such rules and regulations as shall be promulgated by such department. The state department may give due consideration to the advantages of contracting with any organization which may be serving in Iowa as "intermediary" or "carrier" under Title XVIII of the federal Social Security Act, as amended.

6. Shall co-operate with any agency of the state or federal government in any manner as may be necessary to qualify for federal aid and assistance for medical assistance in conformity with the provisions of chapter 249, this chapter and Titles XVI and XIX of the federal Social Security Act, as amended.

7. Shall provide for the professional freedom of those licensed practitioners who determine the need for or provide medical care and services, and shall provide freedom of choice to recipients to select the provider of care and services, except when the recipient is eligible for participation in a health maintenance organization or prepaid health plan which limits provider selection and which is approved by the department. However, this shall not limit the freedom of choice to recipients to select providers in instances where such provider services are eligible for reimbursement under the medical assistance program but are not provided under the health maintenance organization or under the prepaid health plan, or where the recipient has an already established program of specialized medical care with a particular provider. The department may also restrict the recipient's selection of providers to control the individual recipient's overuse of care and services, provided the department can document this overuse. The department shall promulgate rules for determining the overuse of services, including rights of appeal by the recipient.

8. Shall advise and consult at least semiannually with a council composed of the president, or the president's representative who is a member of the professional organization represented by the president, of the Iowa medical society, the Iowa osteopathic medical association, the Iowa state dental society, the Iowa state nurses association, the Iowa pharmacists association, the Iowa podiatry society, the Iowa optometric association, the community mental health centers association of Iowa, the Iowa psychological association, the Iowa hospital association, the Iowa osteopathic hospital association, opticians' association of Iowa, Inc., the Iowa hearing aid society, the Iowa speech, language, and hearing association, the Iowa health care association, the Iowa association for home care, the Iowa council of health care centers, and the Iowa association of homes for the aging, together with one person designated by the Iowa state board of chiropractic examiners; one state representative from each of the two major political parties appointed by the speaker of the house, one state senator from each of the two major political parties appointed by the majority leader of the senate, each for a term of two years; the president or the president's representative of the association for retarded citizens; four public representatives, appointed by the governor for staggered terms of two years each, none of whom shall be members of, or practitioners of, or have a pecuniary interest in any of the professions or businesses represented by any of the several professional groups and associations specifically represented on the council under this subsection, and at least one of whom shall be a recipient of medical assistance; the director of public health, or a representative designated by the director; and the dean of the college of medicine, university of Iowa, or a representative designated by the dean.

For each council meeting, other than those held during the time the general assembly is in session, each legislative member of the council shall be reimbursed for actual traveling and other necessary expenses and shall receive a per diem of forty dollars for each day in attendance, as shall the public representatives, regardless of whether the general assembly is in session.

9. Determine the method and level of reimbursement for all medical and health services referred to in section 249A.2, subsection 1 or 6, after considering all of the following:

a. The promotion of efficient and cost-effective delivery of medical and health services.

b. Compliance with federal law and regulations.

c. The level of state and federal appropriations for medical assistance.

d. Reimbursement at a level as near as possible to actual costs and charges after priority is given to the considerations in paragraphs "a", "b", and "c".

10. Shall provide for granting an opportunity for a fair hearing before the director of human services or the director's authorized representative to any individual whose claim for medical assistance under this chapter is denied or is not acted upon with reasonable promptness.

11. In determining the medical assistance eligibility of a pregnant woman, infant, or child under the federal Social Security Act, §1902(l), resources which are used as tools of the trade shall not be considered.

12. In determining the medical assistance eligibility of a pregnant woman, infant, or child under the federal Social Security Act, §1902(l), or pursuant to section 249A.3, subsection 2, paragraph "g", the department shall establish resource standards and exclusions not less generous than the resource standards and exclusions adopted pursuant to section 255A.5, if in compliance with federal laws and regulations.

Judicial review of the actions of the director or department may be sought in accordance with the terms of the Iowa administrative procedure Act. In the event a petition for judicial review is filed, the director or the director's authorized representative shall furnish the petitioner with a copy of the application and all supporting papers, a transcript of the testimony taken at the hearing, if any, and a copy of its decision.

89 Acts, ch 37, §1 SF 402; 89 Acts, ch 104, §5 SF 117; 89 Acts, ch 304, §203 SF 538

Appointments by lieutenant governor remain in effect until the end of their terms; 86 Acts, ch 1245, §2035

Unnumbered paragraph 1 amended

Section 8, unnumbered paragraph 1 amended

NEW subsections 11 and 12

### 249A.6 Subrogation.

1. When payment is made by the department for medical care or expenses through the medical assistance program on behalf of a recipient, the department is subrogated, to the extent of those payments, to all monetary claims which the recipient may have against third parties. A compromise, including but not limited to a settlement, waiver or release, of a claim to which the department is subrogated under this section does not defeat the department's right of recovery except pursuant to the written agreement of the director or the director's designee or except as provided in this section. A settlement, award, or judgment structured in any manner not to include medical expenses or an action brought by a recipient or on behalf of a recipient which fails to state a claim for recovery of medical expenses does not defeat the department's right of subrogation if there is any recovery on the recipient's claim unless the claim for recovery of medical expenses is barred by an applicable statute of limitation, or the legal representative of the medical assistance recipient does not represent the person or persons who have legal standing to bring the claim for recovery of medical expenses. In such situations, the legal representative shall notify the department of the situation; the department may then notify the person or persons having legal standing to bring the claim of the right to proceed with the claim against the third-party tort-feasor. Should the person or persons elect not to proceed, the department may then proceed in a separate action with a claim to recover its subrogation interest.

2. The department shall be given notice of monetary claims against third parties as follows:

a. Applicants for medical assistance shall notify the department of any possible claims against third parties upon submitting the application. Recipients of medical assistance shall notify the department of any possible claims when those claims arise.

b. A person who provides health care services to a person receiving assistance through the medical assistance program shall notify the department whenever the person has reason to believe that third parties may be liable for payment of the costs of those health care services.

c. An attorney representing an applicant for or recipient of assistance on a claim to which the department is subrogated under this section shall notify the department of the claim of which the attorney has actual knowledge, prior to filing a claim, commencing an action or negotiating a settlement offer.

The mailing and deposit in a United States post office or public mailing box of the notice, addressed to the department at its state or district office location, is adequate legal notice of the claim.

3. The subrogation rights of the department are valid and binding on an attorney, insurer, or other third party only upon notice by the department or unless the insurer or third party has actual notice that the recipient is receiving medical assistance from the department and only to the extent to which the attorney, insurer, or third party has not made payment to the recipient or an assignee of the recipient prior to the notice. Payment of benefits by an insurer or third party pursuant to the subrogation rights of this section discharges the attorney, insurer, or third party from liability to the recipient or the recipient's assignee to the extent of the payment to the department.

4. If a recipient of assistance through the medical assistance program incurs the obligation to pay attorney fees and court costs for the purpose of enforcing a monetary claim to which the department is subrogated under this section, upon the receipt of a judgment or settlement of the claim, the court costs and reasonable attorney fees shall first be deducted from the judgment or settlement. One-third of the remaining balance shall then be deducted and paid to the recipient. From the remaining balance, the claim of the department shall be paid. Any amount remaining shall be paid to the recipient. An attorney acting on behalf of a recipient of medical assistance for the purpose of enforcing a claim to which the department is subrogated shall not collect from the recipient any amount as attorney fees which is in excess of the amount which the attorney customarily would collect on claims not subject to this section.

5. For purposes of this section the term "third party" includes an attorney, individual, institution, corporation, or public or private agency which is or may be liable to pay part or all of the medical costs incurred as a result of injury, disease or disability by or on behalf of an applicant for or recipient of assistance under the medical assistance program.

89 Acts, ch 111, §1 SF 412  
Subsection 1 amended

## CHAPTER 249D

### ELDER IOWANS ACT

#### **249D.24 Information on acceptance of medicare assignments.**

1. The department, in cooperation with the appropriate professional medical organizations, shall collect and analyze information on the number of physicians in Iowa in each of the following categories, including breakdowns by geographic region and by medical specialization:

a. Physicians who accept medicare assignments as payment in full for all medicare patients.

b. Physicians who accept medicare assignments as payment in full for all medicare patients with income and resources below the level established by the department.

c. Physicians who participate in a voluntary medicare assignment program.

2. The department shall identify any areas of the state and physician specialty areas in which physician participation in any of the categories under subsection 1 is not sufficient to meet the access to care needs of medicare patients in Iowa and shall recommend activities to improve access in those areas.

3. The information developed by the department shall be provided at least annually to the governor and the general assembly and to other interested persons upon request.

4. As used in this section:

a. "*Medicare*" means the program of health insurance established under Title XVIII of the federal Social Security Act.

b. "*Medicare assignment*" means payment by medicare of charges for health care services provided to medicare patients.

c. "*Medicare patient*" means a patient who is a beneficiary under medicare.

89 Acts, ch 304, §303 SF 538

Legislative findings; 89 Acts, ch 304, §302 SF 538

NEW section

**249D.25 through 249D.30** Reserved.

**249D.33 Area agencies on aging duties.**

Each area agency on aging shall:

1. Develop and administer an area plan on aging.

2. Assess the types and levels of services needed by older persons in the planning and service area, and the effectiveness of other public or private programs serving those needs.

3. Enter into subgrants or contracts to provide all services under the plan.

4. Provide technical assistance as needed, prepare written monitoring reports at least quarterly, and provide a written report of an annual on-site assessment of all service providers funded by the area agency.

5. Coordinate the administration of its plan with federal programs and with other federal, state, and local resources in order to develop a comprehensive and coordinated service system.

6. Establish an advisory council.

7. Give preference in the delivery of services under the area plan to elders with the greatest economic or social need.

8. Assure that elders in the planning and service area have reasonably convenient access to information and referral services.

9. Provide adequate and effective opportunities for elders to express their views to the area agency on policy development and program implementation under the area plan.

10. Designate community focal points.

11. Contact outreach efforts, with special emphasis on the rural elderly, to identify elders with greatest economic or social needs and inform them of the availability of services under the area plan.

12. Develop and publish the methods that the agency uses to establish preferences and priorities for services.

13. Attempt to involve the area lawyers in legal assistance activities.

14. Submit all fiscal and performance reports in accordance with the policies of the commission.

15. Monitor, evaluate, and comment on policies, programs, hearings, levies, and community actions which significantly affect the lives of elders.

16. Conduct public hearings on the needs of elders.

17. Represent the interests of elders to public officials, public and private agencies, or organizations.

18. Coordinate activities in support of the statewide long-term care resident's advocate program.

19. Coordinate planning with other agencies and organizations to promote new or expanded benefits and opportunities for elders.

20. Coordinate planning with other agencies for assuring the safety of elders in a natural disaster or other safety threatening situation.

21. Submit a report to the department of elder affairs every six months, of the name of each health care facility in its area for which the care review committee has failed to submit the report required by rules adopted pursuant to section 249D.44.

89 Acts, ch 241, §6 SF 31  
NEW subsection 21

#### **249D.58 Long-term care coordinating unit.**

1. A long-term care coordinating unit is created within the department of elder affairs. The membership of the coordinating unit consists of:

- a. The director of human services.
- b. The director of the department of elder affairs.
- c. The director of public health.
- d. The director of the department of inspections and appeals.
- e. Two members appointed by the governor.

2. The long-term care coordinating unit shall:

a. Develop, for legislative review, the mechanisms and procedures necessary to implement, utilizing current personnel, a case-managed system of long-term care based on a uniform comprehensive assessment tool.

b. Develop common intake and release procedures for the purpose of determining eligibility at one point of intake and determining eligibility for programs administered by the departments of human services, public health, and elder affairs, such as the medical assistance program, federal food stamp program, and homemaker-home health aide programs.

c. Develop common definitions for long-term care services.

d. Develop procedures for coordination at the local and state level among the providers of long-term care, including when possible co-campusing of services. The director of the department of general services shall give particular attention to this section when arranging for office space pursuant to section 18.12 for these three departments.

e. Prepare a long-range plan for the provision of long-term care services within the state.

f. Propose rules and procedures for the development of a comprehensive long-term care and community-based services program.

g. Submit a report of its activities to the governor and general assembly on January 15 of each year.

89 Acts, ch 52, §1 HF 270  
Subsection 1, NEW paragraph d and e

#### **249D.60 Representative payee project.**

1. The department of elder affairs shall provide appropriate public and private organizations with written notice of the department's intent to serve as sponsor of the representative payee project in Iowa. The director shall designate a departmental staff person to serve as the project staff coordinator.

2. The department shall provide logistical support for the project including office space, telephone communications, office supplies, and postage.

3. The department shall provide for the training of representative payees.

4. The department shall establish and maintain an advisory council for the project which shall hold meetings quarterly. The department shall determine the council's membership by rule.

5. The department shall assist representative payees, and shall negotiate banking services for the project.

6. The department shall designate a volunteer, who may be a representative payee, as the public liaison to inform interested agencies and persons about the project, and to undertake to increase public awareness and referral of potential clients.

7. A person acting as a representative payee shall be considered acting in a fiduciary capacity, and shall be liable for acts or omissions of the representative payee constituting a breach of the fiduciary duty imposed by chapter 633.

8. For purposes of this section, "*representative payee*" means a person appointed by the social security administration to provide financial management services, without compensation, to individuals receiving social security administration or other government benefits, who are medically incapable of making responsible financial decisions.

89 Acts, ch 178, §5 HF 585  
NEW section

## CHAPTER 250

### COMMISSIONS OF VETERAN AFFAIRS

#### 250.6 Qualification—organization.

The members of the commission shall qualify by taking the usual oath of office, and give bond in the sum of five hundred dollars each, conditioned for the faithful discharge of their duties with sureties to be approved by the county auditor. The commission shall organize by the selection of one of their members as chairperson, and one as secretary. The commission, subject to the approval of the board of supervisors, shall have power to employ an executive director and other necessary administrative or clerical assistants when needed, the compensation of such employees to be fixed by the board of supervisors, but no member of the commission shall be so employed. The executive director must possess the same qualifications as provided in section 250.3 for commission members. However, this qualification requirement shall not apply to a person employed as an executive director prior to July 1, 1989. The commission with the approval of the board of supervisors shall appoint one of the deputies of the county auditor to serve as administrative assistant to the commission, to serve without additional compensation, unless for good reasons shown, this arrangement is not feasible.

In counties where a commission has established an office, the office shall be open a minimum of four hours each work day. The hours that the office is open shall be posted in a prominent position outside the office. In lieu of an office being open a minimum of four hours each work day, the names, home addresses, telephone numbers, and duties of commission members shall be posted.

89 Acts, ch 248, §1 HF 146  
Section amended

## CHAPTER 252A

### UNIFORM SUPPORT OF DEPENDENTS LAW

#### 252A.3 Spouse liable for support.

For the purpose of this chapter:

1. A spouse in one state is hereby declared to be liable for the support of the spouse and any child or children under eighteen years of age and any other dependent residing or found in the same state or in another state having

substantially similar or reciprocal laws. The court having jurisdiction of the respondent in a proceeding instituted under this chapter shall establish the respondent's monthly support payment and the amount of the support debt accrued and accruing pursuant to section 598.21, subsection 4.

2. A parent in one state is hereby declared to be liable for the support of the parent's child or children under eighteen years of age residing or found in the same state or in another state having substantially similar or reciprocal laws, whenever the other parent of such child or children is dead, or cannot be found, or is incapable of supporting the child or children, and, if the liable parent is possessed of sufficient means or able to earn the means. The court having jurisdiction of the respondent in a proceeding instituted under this chapter shall establish the respondent's monthly support payment and the amount of the support debt accrued and accruing pursuant to section 598.21, subsection 4.

3. The parents in one state are hereby declared to be severally liable for the support of a dependent child eighteen years of age or older residing or found in the same state or in another state having substantially similar or reciprocal laws, whenever such child is unable to maintain the child's self and is likely to become a public charge.

4. A child or children born of parents who, at any time prior or subsequent to the birth of such child, have entered into a civil or religious marriage ceremony, shall be deemed the legitimate child or children of both parents, regardless of the validity of such marriage.

5. A child or children born of parents who held or hold themselves out as husband and wife by virtue of a common law marriage recognized as valid by the laws of the initiating state and of the responding state shall be deemed the legitimate child or children of both parents.

6. A man or woman who was or is held out as the person's spouse by a person by virtue of a common law marriage recognized as valid by the laws of the initiating state and of the responding state shall be deemed the legitimate spouse of such person.

7. Notwithstanding the fact that the respondent has obtained in any state or country a final decree of divorce or separation from the respondent's spouse or a decree dissolving the marriage, the respondent shall be deemed legally liable for the support of any dependent child of such marriage.

8. Duties of support applicable under this chapter are those imposed or imposed under the laws of any state where the respondent was present during the period for which support is sought. The respondent is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

9. The natural parents of a child born out of wedlock shall be severally liable for the support of the child, but the liability of the natural father shall not be enforceable unless the natural father has been adjudicated to be the child's father by a court of competent jurisdiction, or the natural father has acknowledged paternity of the child in open court or by written statement.

89 Acts, ch 166, §2 HF 403  
1989 amendments effective October 12, 1989  
Subsections 1 and 2 amended

### **252A.6 How commenced—trial.**

1. A proceeding under this chapter shall be commenced by a petitioner, or a petitioner's representative, by filing a verified petition in the court in equity in the county of the state wherein the petitioner resides or is domiciled, showing the name, age, residence and circumstances of the petitioner, alleging that the petitioner is in need of and is entitled to support from the respondent, giving the respondent's name, age, residence and circumstances, and praying that the respondent be compelled to furnish such support. The petitioner may include in or

attach to the petition any information which may help in locating or identifying the respondent including, but without limitation by enumeration, a photograph of the respondent, a description of any distinguishing marks of the respondent's person, other names and aliases by which the respondent has been or is known, the name of the respondent's employer, the respondent's fingerprints, or social security number.

2. If the respondent be a resident of or domiciled in such state and the court has or can acquire jurisdiction of the person of the respondent under existing laws in effect in such state, such laws shall govern and control the procedure to be followed in such proceeding.

3. If the court of this state acting as an initiating state finds that the petition sets forth facts from which it may be determined that the respondent owes a duty of support and that a court of the responding state may obtain jurisdiction of the respondent or the respondent's property, it shall so certify and shall cause three copies of (a) the petition (b) its certificate and (c) this chapter to be transmitted to the court in the responding state. If the name and address of such court is unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause such copies to be transmitted to the state information agency or other proper official of the responding state, with a request that it forward them to the proper court, and that the court of the responding state acknowledge their receipt to the court of the initiating state.

4. When the court of this state, acting as a responding state, receives from the court of an initiating state the aforesaid copies, it shall docket the cause, notify the county attorney or other official acting as petitioner's representative, set a time and place for a hearing, and take such action as is necessary in accordance with the laws of this state to serve notice and thus obtain jurisdiction over the respondent. If a court of the state, acting as a responding state, is unable to obtain jurisdiction of the respondent or the respondent's property due to inaccuracies or inadequacies in the petition or otherwise, the court shall communicate this fact to the court in the initiating state, shall on its own initiative use all means at its disposal to trace the respondent or the respondent's property, and shall hold the case pending the receipt of more accurate information or an amended petition from the court in the initiating state.

However, if the court of the responding state is unable to obtain jurisdiction because the respondent resides in or is domiciled or found in another county of the responding state, the papers received from the court of the initiating state may be forwarded by the court of the responding state which received the papers to the court of the county in the responding state in which the respondent resides or is domiciled or found, and the court of the initiating state shall be notified of the transfer. The court of the county where the respondent resides or is domiciled or found shall acknowledge receipt of the papers to both the court of the initiating state and the court of the responding state which forwarded them, and shall take full jurisdiction of the proceedings with the same powers as if it had received the papers directly from the court of the initiating state.

5. It shall not be necessary for the petitioner or the petitioner's witnesses to appear personally at such hearing, but it shall be the duty of the petitioner's representative of the responding state to appear on behalf of and represent the petitioner at all stages of the proceeding.

6. If at such hearing the respondent controverts the petition and enters a verified denial of any of the material allegations thereof, the judge presiding at such hearing shall stay the proceedings and transmit to the judge of the court in the initiating state a transcript of the clerk's minutes showing the denials entered by the respondent.

7. Upon receipt by the judge of the court in the initiating state of such transcript, such court shall take such proof, including the testimony of the

petitioner and the petitioner's witnesses and such other evidence as the court may deem proper, and, after due deliberation, the court shall make its recommendation, based on all of such proof and evidence, and shall transmit to the court in the responding state an exemplified transcript of such proof and evidence and of its proceedings and recommendation in connection therewith.

8. Upon the receipt of such transcript, the court in the responding state shall resume its hearing in the proceeding and shall give the respondent a reasonable opportunity to appear and reply.

9. Upon the resumption of such hearing, the respondent shall have the right to examine or cross-examine the petitioner and the petitioner's witnesses by means of depositions or written interrogatories, and the petitioner shall have the right to examine or cross-examine the respondent and the respondent's witnesses by means of depositions or written interrogatories.

10. If a respondent, duly summoned by a court in the responding state, willfully fails without good cause to appear as directed in the summons, the respondent shall be punished in the same manner and to the same extent as is provided by law for the punishment of a defendant or witness who willfully disobeys a summons or subpoena duly issued out of such court in any other action or proceeding cognizable by said court.

11. If, on the return day of the summons, the respondent appears at the time and place specified in the summons and fails to answer the petition or admits the allegations of the petition, or, if, after a hearing has been duly held by the court in the responding state in accordance with this section, the court has found and determined that the prayer of the petitioner, or any part of the prayer, is supported by the evidence adduced in the proceeding, and that the petitioner is in need of and entitled to support from the respondent, the court shall make and enter an order directing the respondent to furnish support to the petitioner and to pay a sum as the court determines pursuant to section 598.21, subsection 4. A certified copy of the order shall be transmitted by the court to the court in the initiating state and the copy shall be filed with and made a part of the records of the court in the proceeding. Upon entry of an order for support or upon failure of a person to make payments pursuant to an order for support, the court may require the respondent to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the support. Upon the respondent's failure to pay the support under the order, the court may declare the security, bond, or other guarantee forfeited.

12. The court making such order may require the respondent to make payment at specified intervals to the clerk of the district court, or to the dependent, or to any state or county agency, and to report personally to the sheriff or any other official, at such times as may be deemed necessary.

13. A respondent who shall willfully fail to comply with or violate the terms or conditions of the support order or of the respondent's probation shall be punished by the court in the same manner and to the same extent as is provided by law for a contempt of such court or a violation of probation ordered by such court in any other suit or proceeding cognizable by such court.

14. The court of this state when acting as a responding state shall have the following duties which may be carried out through the clerk of the court: Upon receipt of a payment made by the respondent pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state, and upon request to furnish to the court of the initiating state a certified statement of all payments made by the respondent.

15. Any order of support issued by a court of the state acting as a responding state shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid

pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

16. The court of the initiating state shall receive and accept all payments made by the respondent to the probation department or bureau of the court of the responding state and transmitted by the latter on behalf of the respondent. Upon receipt of any such payment, and under such rules as the court of the initiating state may prescribe, the court, or its probation department or bureau, as the court may direct, shall deliver such payment to the dependent person entitled thereto, take a proper receipt and acquittance therefor, and keep a permanent record thereof.

89 Acts, ch 166, §3 HF 403  
1989 amendment effective October 12, 1989  
Subsection 11 amended

## CHAPTER 252B

### CHILD SUPPORT RECOVERY

#### 252B.9 Availability of records.

The director may request from state, county and local agencies, information and assistance deemed necessary to carry out the provisions of this chapter. State, county and local agencies, officers and employees shall co-operate with the unit in locating absent parents of children on whose behalf public assistance is being provided and shall on request supply the department with available information relative to the location, income and property holdings of the absent parent, notwithstanding any provisions of law making such information confidential.

Information recorded by the department pursuant to this section shall be available only to the unit, attorneys prosecuting a case in which the unit may participate according to sections 252B.5 and 252B.6, courts having jurisdiction in support or abandonment proceedings, agencies in other states charged with support collection and paternity determination responsibilities, and a resident parent, legal guardian, attorney, or agent of a child who is not receiving assistance under Title IV-A of the federal Social Security Act as determined by the rules of the department and the provisions of Title IV of the United States Social Security Act.

89 Acts, ch 283, §31 SF 540  
Section amended

## CHAPTER 252C

### CHILD SUPPORT DEBTS—ADMINISTRATIVE PROCEDURES

#### 252C.2 Assignment—creation of support debt—subrogation.

1. By accepting public assistance for or on behalf of a dependent child or a dependent child's caretaker, the recipient is deemed to have made an assignment to the department of any and all right, title, and interest in any support obligation and arrearages owed to or for the child or caretaker up to the amount of public assistance paid for or on behalf of the child or caretaker.

2. The payment of public assistance to or for the benefit of a dependent child or a dependent child's caretaker creates a support debt due and owing to the department by the responsible person in an amount equal to the public assistance payment, except that the support debt is limited to the amount of a support obligation established by court order or by the administrator. If a court order has not been entered, the administrator may establish a support debt, both as to amounts accrued and accruing, pursuant to section 598.21, subsection 4. However,

a support debt is not created in favor of the department against a responsible person for the period during which the responsible person is a recipient on the person's own behalf of public assistance for the benefit of the dependent child or the dependent child's caretaker.

3. The provision of child support collection or paternity determination services under chapter 252B to an individual, even though the individual is ineligible for public assistance, creates a support debt due and owing to the individual or the individual's child or ward by the responsible person in the amount of a support obligation established by court order or by the administrator. If a court order has not been entered, the administrator may establish a support debt in favor of the individual or the individual's child or ward and against the responsible person, both as to amounts accrued and accruing, pursuant to section 598.21, subsection 4.

4. The department is subrogated to the rights of a dependent child or a dependent child's caretaker to bring a court action or to execute an administrative remedy for the collection of support. The administrator may petition an appropriate court for modification of a court order on the same grounds as a party to the court order can petition the court for modification.

89 Acts, ch 166, §4 HF 403  
1989 amendment effective October 12, 1989  
Subsections 2 and 3 amended

#### **252C.4 Certification to court—hearing—default.**

1. If a timely written request for a hearing is received, the administrator shall certify the matter to the district court in the county in which the order has been filed, or if no such order has been filed, then to a district court in the county where the dependent child resides or, where the dependent child resides in another state, to the district court where the absent parent resides.

2. If the matter has not been heard previously by the district court, the certification shall include true copies of the notice and finding of financial responsibility or notice of the support debt accrued and accruing, the return of service, the written objections and request for hearing, and true copies of any administrative orders previously entered.

3. The court shall set the matter for hearing and notify the parties of the time and place of hearing.

4. The court shall establish the monthly support payment and the amount of the support debt accrued and accruing pursuant to section 598.21, subsection 4.

5. If a party fails to appear at the hearing, upon a showing of proper notice to that party, the court may find that party in default and enter an appropriate order.

89 Acts, ch 166, §5 HF 403; 89 Acts, ch 179, §1 HF 662  
1989 amendment to subsection 4 effective October 12, 1989  
Subsections 1 and 4 amended

#### **252C.5 Filing and docketing of financial responsibility order—order effective as district court decree.**

A true copy of any order entered by the administrator pursuant to this chapter, along with a true copy of the return of service, if applicable, may be filed in the office of the clerk of the district court in the county in which the dependent child resides or, where the dependent child resides in another state, in the office of the district court in the county in which the absent parent resides. Upon filing, the clerk shall enter the order in the judgment docket, and the administrator's order shall be presented, ex parte, to the district court for review and approval, and unless defects appear on the face of the order or on the attachments, the district court shall approve the order, and the order shall have all the force, effect, and attributes of a docketed order or decree of the district court.

89 Acts, ch 179, §2 HF 662  
Section amended

**252C.10 Schedule of minimum support guidelines.** Repealed by 89 Acts, ch 166, §8. See §598.21(4). HF 403

## CHAPTER 253

### COUNTY CARE FACILITIES

#### 253.3 Annual published report.

The board of supervisors, prior to September 1 of each year, shall publish in the official papers of the county as part of its proceedings, a financial statement of the receipts of the county care facility, or county farm, itemizing them and stating their source, which report shall also set forth the total expenditures and the value of the property on hand on July 1 of the year for which the report is made and a comparison with the inventory of the previous year. The inventory need not specifically account by item for individual items of personal property valued at less than one hundred dollars.

89 Acts, ch 214, §1 HF 728  
Section amended

## CHAPTER 255

### MEDICAL AND SURGICAL TREATMENT OF INDIGENT PERSONS

#### 255.24 Record and report of expenses.

The superintendent of said hospital shall keep a correct account of all medicine, care, and maintenance furnished to said patients, and shall make and file with the director of revenue and finance an itemized, sworn statement of all expenses thereof incurred in said hospital. But the superintendent shall render separate bills showing the actual cost of all appliances, instruments, X-ray and other special services used in connection with such treatment, commitments, and transportation to and from the said university hospital, including the expenses of attendants and escorts.

All purchases of materials, appliances, instruments and supplies by the university hospital, in cases where more than one hundred dollars is to be expended, and where the prices of the commodity or commodities to be purchased are subject to competition, shall be upon open competitive quotations, and all contracts therefor shall be subject to the provisions of chapter 72. However, purchases may be made through a hospital group purchasing organization provided that university hospitals is a member of the organization and the group purchasing organization selects the items to be offered to members through a competitive bidding process.

89 Acts, ch 319, §38 HF 774  
Unnumbered paragraph 2 amended

## CHAPTER 255A

### OBSTETRICAL AND NEWBORN INDIGENT PATIENT CARE PROGRAM

#### 255A.14 Funds—reversion of unencumbered balance.

Notwithstanding section 8.33 or any other provision of law, any unencumbered balance remaining in the obstetrical and newborn patient care fund on June 30 of each year shall be used for the payment of warrants issued pursuant to section 255.25.

89 Acts, ch 83, §35 SF 112  
Section amended

## CHAPTER 256

## DEPARTMENT OF EDUCATION

Studies of incentives for cooperating teachers and faculty-student interaction;  
reports due June 30, 1990; 89 Acts, ch 210, §15 SF 450

Department to compile information on school buildings and transportation equipment and report in 1991;  
89 Acts, ch 135, §131 HF 535

**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. Prescribe standards and procedures for the approval of practitioner preparation programs and professional development programs, offered by practitioner preparation institutions and area education agencies, in this state. Procedures provided for approval of programs shall include procedures for enforcement of the prescribed standards and shall not include a procedure for the waiving of any of the standards prescribed.
4. Adopt, and update annually, a five-year plan for the achievement of educational goals in Iowa.
5. Adopt rules under chapter 17A for carrying out the responsibilities of the department.
6. Hear appeals of persons aggrieved by decisions of boards of directors of school corporations under chapter 290 and other appeals prescribed by law. The state board may review the record and shall review the decision of the director of the department of education or the administrative law judge designated by the director 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 June 30, 1990.

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 licensed teachers.

When curriculum is provided by means of telecommunications, it shall be taught by an appropriately licensed teacher. The teacher shall either be present in the classroom, or be present at the location at which the curriculum delivered by means of telecommunications originates.

The rules shall provide that when the curriculum is taught by an appropriately licensed teacher at the location at which the telecommunications originates, the curriculum received shall be under the supervision of a licensed teacher. For the purposes of this subsection, "supervision" means that the curriculum is monitored by a licensed teacher and the teacher is accessible to the students receiving the curriculum by means of telecommunications.

The state board shall establish an advisory committee to make recommendations for rules required under this subsection on the use of telecommunications as an instructional tool. The committee shall be composed of representatives from 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 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 practitioner preparation departments at its institutions, other practitioner preparation departments located within private colleges and universities, educational research agencies or facilities, and other agencies deemed appropriate by the state board, in developing these procedures.

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.

13. By July 1, 1990, adopt rules establishing early childhood and early elementary certification or endorsement standards for teachers, elementary school principals, licensed child care providers, and administrators who work with children from three through eight years of age, which shall require knowledge of aspects of child development from birth through eight years of age.

14. Prescribe guidelines for facility standards, maximum class sizes, and maximum in classroom pupil-teacher and teacher-aide ratios for grades kinder-

garten through three and before and after school and summer child care programs provided under the direction of the school district. The department also shall indicate modifications to such guidelines necessary to address the needs of at-risk children.

15. Not later than January 1, 1991, adopt rules under chapter 17A for alternative training programs for persons who hold a temporary substitute teaching license issued under chapter 260. Rules adopted shall provide that alternative training programs be offered by approved practitioner preparation programs. Rules adopted shall also provide that alternative training programs include an evaluation, conducted by an appropriately licensed practitioner who is not an employee of the school corporation participating in the alternative training program, of the performance of a person who holds a temporary substitute teaching license and is employed by a school corporation and that satisfactory completion of the evaluation be a condition precedent to obtaining a standard license under chapter 260.

16. Elect to a two-year term, from its members in each even-numbered year, a president of the state board, who shall serve until a successor is elected and qualified.

89 Acts, ch 8, §1 HF 133; 89 Acts, ch 206, §5 SF 223; 89 Acts, ch 210, §1-3 SF 450; 89 Acts, ch 265, §19-22 HF 794  
Goals for early childhood education; 89 Acts, ch 206, §1 SF 223  
Board to adopt rules relating to parent-teacher conferences as instructional time, and fewer days of instruction required for certain high school seniors; 89 Acts, ch 91, §1 HF 670  
See Code editor's note  
Local recommendations on establishment of child care programs and curricula to be submitted by October 1, 1990; 89 Acts, ch 206, §11 SF 223  
Subsection 3 stricken and rewritten  
Subsections 6 and 8 amended  
Subsection 9, unnumbered paragraphs 1-3 amended  
Subsections 10 and 11 amended  
NEW subsections 13-16

### **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 the merit system provisions of chapter 19A and are subject to section 256.10.
5. Transmit to the department of management information about the distribution of state and federal funds pursuant to state law and rules of the department.
6. Develop a budget and transmit to the department of management estimates of expenditure requirements for all functions and services of the department.
7. Accept and administer federal funds apportioned to the state for educational and rehabilitation purposes and accept surplus commodities for distribution when made available by a governmental agency. The director may also accept grants and gifts on behalf of the department.
8. Cooperate with other governmental agencies and political subdivisions in the development of rules and enforcement of laws relating to education.
9. Conduct research on education matters.
10. Submit to each regular session of the general assembly recommendations relating to revisions or amendments to the school laws.

11. Approve, coordinate, and supervise the use of electronic data processing by school districts, area education agencies, and merged areas.

12. Act as the executive officer of the state board.

13. Act as custodian of a seal for the director's office and authenticate all true copies of decisions or documents.

14. Appoint advisory committees, in addition to those required by law, to advise in carrying out the programs, services, and functions of the department.

15. Provide the same educational supervision for the schools maintained by the director of human services as is provided for the public schools of the state and make recommendations to the director of human services for the improvement of the educational program in those institutions.

16. Interpret the school laws and rules relating to the school laws.

17. Hear and decide appeals arising from the school laws not otherwise specifically granted to the state board.

18. Prepare forms and procedures as necessary to be used by area education agency boards, district boards, school officials, principals, teachers, and other employees, and to insure uniformity, accuracy, and efficiency in keeping records in both pupil and cost accounting, the execution of contracts, and the submission of reports, and notify the area education agency board, district board, or school authorities when a report has not been filed in the manner or on the dates prescribed by law or by rule that the school will not be accredited until the report has been properly filed.

19. Determine by inspection, supervision, or otherwise, the condition, needs, and progress of the schools under the supervision of the department, make recommendations to the proper authorities for the correction of deficiencies and the educational and physical improvement of the schools, and request a state audit of the accounts of a school district, area education agency, school official, or school employee handling school funds when it is apparent that an audit should be made.

20. Preserve reports, documents, and correspondence that may be of a permanent value, which shall be open for inspection under reasonable conditions.

21. Keep a record of the business transacted by the director.

22. Endeavor to promote among the people of the state an interest in education.

23. Classify and define the various schools under the supervision of the department, formulate suitable courses of study, and publish and distribute the classifications and courses of study and promote their use.

24. Report biennially to the governor, at the time provided by law, the condition of the schools under the department's supervision, including the number 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.

31. Develop criteria and procedures to assist in the identification of at-risk children and their developmental needs.

32. Develop, in conjunction with the child development coordinating council or other similar agency, child-to-staff ratio recommendations and standards for at-risk programs based on national literature and test results and Iowa longitudinal test results.

33. Develop programs in conjunction with the center for early development education to be made available to the school districts to assist them in identification of at-risk children and their developmental needs. For a period of one year, beginning July 1, 1988, and ending June 30, 1989, direct the educational services division of the area education agencies to develop program plans to assist the districts in educating at-risk children. The area education agencies may enter into contracts with other groups or agencies to provide all or part of the program. The programs shall include but are not limited to:

- a. Administrator and staff in-service education.
- b. Area education agency and district staff utilization plans.
- c. Qualifications required of personnel administering the program.
- d. Child-to-staff ratio specifications.
- e. Longitudinal testing of the children.
- f. Referrals to outside agencies.
- g. An emphasis on integrating the identified children with the balance of the class.

h. Proposed curriculum content and materials.

i. Cost projections for provision of the programs.

34. Conduct or direct the area education agency to conduct feasibility surveys and studies, if requested under section 282.11, of the school districts within the area education agency service areas and all adjacent territory, including but not limited to contiguous districts in other states, for the purpose of evaluating and recommending proposed whole grade sharing agreements requested under section 282.7 and section 282.10, subsections 1 and 4. The surveys and studies shall be revised periodically to reflect reorganizations which may have taken place in the area education agency, adjacent territory, and contiguous districts in other states. The surveys and studies shall include a cover page containing recommendations and a short explanation of the recommendations. The factors to be used in determining the recommendations include, but are not limited to:

- a. The possibility of long-term survival of the proposed alliance.
- b. The adequacy of the proposed educational programs versus the educational opportunities offered through a different alliance.
- c. The financial strength of the new alliance.
- d. Geographical factors.
- e. The impact of the alliance on surrounding schools.

Copies of the completed surveys and studies shall be transmitted to the affected districts' school boards.

35. Develop standards and instructional materials to do all of the following:

- a. Assist school districts in developing appropriate before and after school programs for elementary school children.

- b. Assist school districts in the development of child care services and programs to complement half-day and all-day kindergarten programs.
- c. Assist school districts in the development of appropriate curricula for all-day, everyday kindergarten programs.
- d. Assist school districts in the development of appropriate curricula for the early elementary grades one through three.
- e. Assist prekindergarten instructors in the development of appropriate curricula and teaching practices.

Standards and materials developed shall include materials which employ developmentally appropriate practices and incorporate substantial parental involvement. The materials and standards shall include alternative teaching approaches including collaborative teaching and alternative dispute resolution training. The department shall consult with the child development coordinating council, the state day care advisory committee, the department of human services, the state board of regents center for early developmental education, the area education agencies, the department of child development in the college of family and consumer sciences at Iowa state university of science and technology, the early childhood elementary division of the college of education at the university of Iowa, and the college of education at the university of northern Iowa, in developing these standards and materials.

For purposes of this section "*substantial parental involvement*" means the physical presence of parents in the classroom, learning experiences designed to enhance the skills of parents in parenting and in providing for their children's learning and development, or educational materials which may be borrowed for home use.

36. By July 1, 1990, develop or direct the area education agencies to develop, a statewide technical assistance support network to provide school districts, or district subcontractors under section 279.49, with assistance in creating developmentally appropriate programs under section 279.49.

37. Administer and approve grants to school districts which provide innovative in-school programming for at-risk children in grades kindergarten through three, in addition to regular school curricula for children participating in the program, with the funds for the grants being appropriated for at-risk children by the general assembly. Grants approved shall be for programs in schools with a high percentage of at-risk children. Preference shall be given to programs which integrate at-risk children with the rest of the school population, which agree to limit class size and pupil-teacher ratios, which include parental involvement, which demonstrate community support, which cooperate with other community agencies, which provide appropriate guidance counseling services, and which use teachers with an early childhood endorsement. Grant programs shall contain an evaluation component that measures student outcomes.

38. Develop a model written publications code including reasonable provisions for the regulation of the time, place, and manner of student expression.

89 Acts, ch 155, §2 SF 224; 89 Acts, ch 206, §6 SF 223  
 Goals for early childhood education; 89 Acts, ch 206, §1 SF 223  
 NEW subsections 35-38

### 256.11 Educational standards.

The state board shall adopt rules under chapter 17A 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. The rules of the state board shall require that a multicultural, nonsexist approach is used by school districts. The educational program shall be taught from a multicultural, nonsexist approach. Global perspectives shall be incorporated into all levels of the educational program.

The rules adopted by the state board pursuant to section 256.17, Code Supplement 1987, to establish new standards shall satisfy the requirements of this section to adopt rules to implement the educational program contained in this section.

The educational program shall be 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. Except as otherwise provided in this subsection, a prekindergarten teacher shall hold a license certifying that the holder is qualified to teach in prekindergarten. A nonpublic school which offers only a prekindergarten may, but is not required to, seek and obtain accreditation.

If the board of directors of a school district contracts for the operation of a prekindergarten program, the program shall be under the oversight of an appropriately licensed teacher. If the program contracted with was in existence on July 1, 1989, oversight of the program shall be provided by the district. If the program contracted with was not in existence on July 1, 1989, the director of the program shall be a licensed teacher and the director shall provide program oversight. Any director of a program contracted with by a school district under this section who is not a licensed teacher is required to register with the department of education.

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 protect and increase physical well-being with attention given to experiences relating to the development of life skills and human growth and development. A kindergarten teacher shall be licensed 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 grades one through six: English-language arts, social studies, mathematics, science, health, human growth and development, physical education, music, traffic safety, and visual art. The health curriculum shall include the characteristics of communicable diseases including acquired immune deficiency syndrome. The state board as part of accreditation standards shall adopt curriculum definitions for implementing the elementary program.

4. The following shall be taught in grades seven and eight: English-language arts, social studies, mathematics, science, health, human growth and development, physical education, music, and visual art. The health curriculum shall include the characteristics of sexually transmitted diseases and acquired immune deficiency syndrome. The state board as part of accreditation standards shall adopt curriculum definitions for implementing the program in grades seven and eight.

5. 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 to be offered and taught for grades nine through twelve is:

α. Five units of science including physics and chemistry; the units of physics and chemistry may be taught in alternate years.

b. Five units of the social studies 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. Six units of English-language arts.

d. Four units of a sequential program in mathematics.

e. Two units of general mathematics.

f. Four sequential units of one foreign language. The department may waive the third and fourth years of 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 licensed 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 is required. 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 or be seeking to be excused in order to enroll in academic courses not otherwise available to the student.

Students in grades nine through eleven may be excused from the physical education requirement in order to enroll in academic courses not otherwise available to the student if the board of directors of the school district in which the school is located, or the authorities in charge of the school, if the school is a nonpublic school, determine that students from the school may be permitted to be excused from the physical education requirement. A student may be excused by the principal of the school in which the student is enrolled, in consultation with the student's counselor, for up to one semester, trimester, or the equivalent of a semester or trimester, per year if the parent or guardian of the student requests in writing that the student be excused from the physical education requirement. The student seeking to be excused from the physical education requirement must, at some time during the period for which the excuse is sought, be a participant in an organized and supervised athletic program which requires at least as much time of participation per week as one-eighth unit of physical education.

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. Three units in the fine arts which shall include at least two of the following: dance, music, theatre, and visual art.

j. One unit of health education which shall include personal health; food and nutrition; environmental health; safety and survival skills; consumer health; family life; human growth and development; substance abuse and nonuse; emotional and social health; health resources; and prevention and control of disease, including sexually transmitted diseases and acquired immune deficiency syndrome.

The state board as part of accreditation standards shall adopt curriculum standards for implementing the program in grades nine through twelve.

6. A pupil is not 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.

7. Programs that meet the needs of each of the following:

a. Pupils requiring special education.

b. Gifted and talented pupils.

c. Programs for at-risk students. Rules adopted by the state board to implement this paragraph shall be based upon the definition of at-risk student developed by the child coordinating council established in section 256A.2 and the department of education, and the state board shall consider the recommendations of the child coordinating council and the department in developing the rules.

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 5. 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 5.

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. a. Effective July 1, 1989, through June 30, 1990, to facilitate the implementation and economical operation of the educational program defined in subsections 4 and 5, each school offering any of grades seven through twelve, except a school which offers grades one through eight as an elementary school, shall meet the media center requirements specified in section 256.11, subsection 9, paragraph "a", Code Supplement 1987.

b. Effective July 1, 1990, unless a waiver has been obtained under section 256.11A, each school or school district shall have a qualified school media specialist who shall meet the licensing standards prescribed by the board of educational examiners and shall be responsible for supervision of the media centers. Each school or school district shall establish a media center, in each attendance center, which shall be accessible to students throughout the school day.

9A. Each school or school district shall provide an articulated sequential guidance program for grades kindergarten through twelve. Until July 1, 1991, a school or school district may obtain a waiver from meeting the requirements of this subsection pursuant to section 256.11A. The guidance counselor shall meet the licensing standards of the board of educational examiners.

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.

89 Acts, ch 210, §4, 5 SF 450; 89 Acts, ch 265, §23-26 HF 794; 89 Acts, ch 319, §39, 40 HF 774

See Code editor's note to §22.7

For amendments to subsection 4 and subsection 5, paragraph h, effective July 1, 1992, see 89 Acts, ch 278, §1, 2 SF 449

Subsections 1, 2, 7 and 9A amended

Subsection 1, NEW unnumbered paragraph 2

Subsection 5, paragraph f amended

Subsection 5, paragraph g amended

Subsection 9, paragraph b amended

### 256.11A Implementation of standards.

1. Schools and school districts are not required to meet the standard adopted by the state board under section 256.17, Code Supplement 1987, requiring that ten units of vocational education be offered and taught in grades nine through twelve unless the general assembly enacts legislation relating to the requirements stated in the standard. Until the time schools and school districts are required to meet the standard, the occupational education requirements stated in section 256.11, subsection 5, paragraph "h", apply.

2. Schools and school districts are not required to meet the requirement stated in the standards adopted by the state board under section 256.17, Code Supplement 1987, that prohibits an individual who is employed or contracted as superintendent from also serving as a principal in that school or school district until July 1, 1990, except as otherwise provided in this subsection. Not later than January 1, 1990, for the school year beginning July 1, 1990, the board of directors of a school district or authorities in charge of a nonpublic school, may file a written request with the department of education that the department waive the requirement for that district or school. The procedures specified in subsection 5 apply to the request.

3. Schools and school districts unable to meet the standard adopted by the state board under section 256.17, Code Supplement 1987, and contained in section 256.11, subsection 9A, effective July 1, 1989, requiring that on July 1, 1989, each board operating a kindergarten through grade twelve program provide an articulated sequential elementary-secondary guidance program may, not later than January 1, 1989, for the school year beginning July 1, 1989, file a written request to the department of education that the department waive the requirement for that school or school district. The procedures specified in subsection 5 apply to the request. Not later than January 1, 1990, for the school year beginning July 1, 1990, the board or authorities may request a one-year extension of the waiver.

If a waiver is approved under subsection 5, the school or school district shall meet the requirements of section 256.11, subsection 9, paragraph "b", Code Supplement 1987, for the period for which the waiver is approved.

4. Schools and school districts are not required to meet the standard adopted by the state board of education under section 256.17, Code Supplement 1987, and contained in section 256.11, subsection 9, paragraph "b", effective July 1, 1990, that requires the board to establish and operate a media services program to support the total curriculum until July 1, 1990, except as otherwise provided in this subsection. Not later than January 1, 1990, for the school year beginning July 1, 1990, the board of directors of a school district, or authorities in charge of a nonpublic school, may file a written request with the department of education that the department waive the requirement for that district or school. The procedures specified in subsection 5 apply to the request.

If a waiver is approved under subsection 5, the school district or school shall meet the requirements of section 256.11, subsection 9, paragraph "a", Code Supplement 1987, for the period for which the waiver is approved.

5. A request for a waiver filed by the board of directors of a school district or authorities in charge of a nonpublic school shall describe actions being taken by the district or school to meet the requirement for which the district or school has requested a waiver. The state board of education shall adopt rules, by January 1, 1990, under chapter 17A to implement a procedure and criteria for the department to use in making a decision to approve a waiver under subsections 2, 3, and 4.

89 Acts, ch 210, §6 SF 450  
Subsection 5 amended

### **256.16 Specific criteria for teacher preparation and certain educators.**

Pursuant to section 256.7, subsection 5, the state board shall adopt rules requiring all higher education institutions providing practitioner preparation to include in the professional education program, preparation that contributes to education of the handicapped and the gifted and talented, which must be successfully completed before graduation from the practitioner preparation program.

A person initially applying for a license shall successfully complete a professional education program containing the subject matter specified in this section, before the initial action by the board of educational examiners takes place.

89 Acts, ch 265, §27 HF 794  
Section amended

**256.17 Standards for accredited schools.** Repealed by 88 Acts, ch 1262, §12. Effective July 1, 1989.

### **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 licensed 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 licensed 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 licensed instructional and support personnel.

b. Demonstration among the grades participating in the project of the following: greater student-licensed instructional personnel ratio, an increased number of course offerings, and an average reduction of course preparations per licensed 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 licensed 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. Licensed 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 licensed 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 licensed 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 licensed 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.

<sup>89</sup> Acts, ch 265, §40 HF 794  
Section amended

### **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 licensed 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.

<sup>89</sup> Acts, ch 265, §40 HF 794  
Section amended

### **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 licensed 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 that school year, but the salary for a licensed 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.

89 Acts, ch 265, §40 HF 794  
Section amended

**256.31 Certification advisory committee.** Repealed by 89 Acts, ch 265, §43. See ch 260. HF 794

### **256.33 Educational technology assistance.**

The department shall consort with school districts, area education agencies, merged area schools, and colleges and universities to provide assistance to them in the use of educational technology for instruction purposes. The department shall consult with the advisory committee on the operation of the narrowcast system, established in section 303.77, the advisory committee on telecommunications, established in section 256.7, subsection 9, and other users of educational technology on the development and operation of programs under this section.

If moneys are appropriated by the general assembly for a fiscal year for purposes provided in this section, the programs funded by the department may include but not be limited to:

1. The development and delivery of in-service training, including summer institutes and workshops for individuals employed by elementary, secondary, and higher education corporations and institutions who are using educational technology for instructional purposes. The in-service programs shall include the use of hardware as well as effective methods of delivery and maintenance of a learning environment.
2. Research projects on ways to improve instruction at all educational levels using educational technology.
3. Demonstration projects which model effective uses of educational technology.
4. Establishment of a clearinghouse for information and research concerning practices relating to and uses of educational technology.
5. Development of curricula that could be used by approved teacher preparation institutions to prepare teachers to use educational technology in the classroom.
6. Pursuit of additional funding from public and private sources for the functions listed in this section.

Priority shall be given to programs integrating telecommunications into the classroom. The department may award grants to school corporations and higher education institutions to perform the functions listed in this section.

89 Acts, ch 319, §41 HF 774  
NEW section

### **256.34 Conservation education program board.**

1. A conservation education program board is created in the department. The board shall have three members appointed as follows:

- a. One member appointed by the director of the department of education.
- b. One member appointed by the director of the department of natural resources.
- c. One member appointed by the president of the Iowa association of county conservation boards.

2. The duties of the board are to revise and produce conservation education materials and to specify stipends to Iowa educators who participate in innovative conservation education programs approved by the board. The board shall allocate the funds provided for under section 455A.19, subsection 1, for the educational materials and stipends.

3. The department shall administer the funds allocated to the conservation education program as provided in this section.

89 Acts, ch 236, §11 HF 769  
NEW section

### **256.35 through 256.39 Reserved.**

#### YOUTH 2000 COORDINATING COUNCIL

### **256.40 Findings.**

It is the intent of the general assembly that greater collaboration and coordination are necessary among state agencies in addressing the many challenges faced by Iowa in assuring the full development of the state's youth into the productive work force necessary for the twenty-first century. Public policy attention must be placed upon the needs of at-risk adolescents and adolescents in at-risk communities. Iowa youth are at risk of a variety of personal and social problems including drug abuse and dependency, adult criminal activities, school dropout, juvenile delinquency, adolescent suicide, and adolescent pregnancy, all of which can lead to adult unemployment and welfare dependency. Approaches to such adolescent problems should be dealt with in a comprehensive and coordinated fashion that involves the family, schools, community programs serving youth, and the private sector in providing positive youth alternatives. The state should play a significant role in aiding in such collaborative efforts within local communities.

89 Acts, ch 225, §15 HF 780  
NEW section

### **256.41 Youth 2000 coordinating council created.**

A youth 2000 coordinating council is created within the department of education. The council consists of the following persons:

1. The director of the department of education, or the director's designee.
2. The administrator of the division of job training and entrepreneurship assistance of the department of economic development, or the administrator's designee.
3. The administrator of the division of children, youth and families in the department of human rights, or the administrator's designee.
4. The administrator of the division of substance abuse of the Iowa department of public health, or the administrator's designee.
5. The administrator of the division of criminal and juvenile justice planning in the department of human rights, or the administrator's designee.
6. The administrator of the division of children and youth programs within the department of human services, or the administrator's designee.
7. The president of the Iowa association of school boards, or the president's designee.

8. The president of the Iowa state education association, or the president's designee.

9. The drug enforcement and abuse prevention coordinator shall serve as an ex officio and nonvoting member.

89 Acts, ch 225, §16 HF 780  
NEW section

### **256.42 Council responsibilities.**

The youth 2000 coordinating council shall do all of the following:

1. Identify ways in which state agencies can coordinate the delivery of state services for youth within local communities, including ways in which local schools can coordinate services with other youth services programs.

2. Identify ways in which state policy should be modified to provide for greater collaboration in addressing youth problems and provide greater efficiency in meeting youth needs.

3. Identify program models for use in local communities for after school and summer youth employment efforts involving public-private partnerships to serve as alternatives to school dropout and drug use by youth.

4. Assist the department of education in providing oversight and assistance to the school-based youth services education program established pursuant to section 279.51.

5. Subject to the availability of funds for this purpose, award community planning grants for collaborative efforts to establish local drug prevention and youth development programs.

6. Provide assistance to local communities and the Iowa department of public health in using substance abuse prevention funds available through federal and foundation funding sources.

7. Seek outside funding support for statewide and regional workshops and conferences on collaborative efforts to address youth problems.

8. Serve as a clearinghouse on collaborative efforts to provide youth development opportunities for at-risk youth and youth in at-risk communities.

9. Report annually to the governor on public policy options available in Iowa to reduce the use of drugs by Iowa's youth and to address other important youth issues.

89 Acts, ch 225, §17 HF 780  
NEW section

## **CHAPTER 256A**

### **CHILD DEVELOPMENT ASSISTANCE**

#### **256A.2 Child development coordinating council established.**

A child development coordinating council is established to promote the provision of child development services to at-risk three-year- and four-year-old children. The council shall consist of the following members:

1. The administrator of the division of children, youth, and families of the department of human rights or the administrator's designee.

2. The director of the department of education or the director's designee.

3. The director of human services or the director's designee.

4. The director of the department of public health or the director's designee.

5. An early childhood specialist of an area education agency selected by the area education agency administrators.

6. The dean of the college of family and consumer sciences at Iowa State University of science and technology or the dean's designee.

7. The dean of the college of education from the University of Northern Iowa or the dean's designee.

8. The professor and head of the department of pediatrics at the University of Iowa or the professor's designee.

9. A resident of this state who is a parent of a child who is or has been served by a federal head start program.

Staff assistance for the council shall be provided jointly by the department of education and the division of children, youth, and families of the department of human rights. Members of the council shall be reimbursed for actual and necessary expenses incurred while engaged in their official duties and shall receive per diem compensation at the level authorized under section 7E.6, subsection 1, paragraph "a".

89 Acts, ch 206, §7 SF 223

Unnumbered paragraph 2 (last paragraph) amended

### 256A.3 Duties of council.

The child development coordinating council shall:

1. Develop a definition of at-risk children for the purposes of this chapter. The definition shall include income, family structure, the child's level of development, and availability or accessibility for the child of a head start or other child day-care program as criteria.

2. Establish minimum guidelines for comprehensive early child development services for at-risk three-year- and four-year-old children. The guidelines shall reflect current research findings on the necessary components for cost-effective child development services.

3. At least biennially, develop an inventory of child development services provided to at-risk three-year- and four-year-old children in this state and identify the number of children receiving and not receiving these services, the types of programs under which the services are received, the degree to which each program meets the council's minimum guidelines for a comprehensive program, and the reasons children not receiving the services are not being served. The council is not required to conduct independent research in developing the inventory, but shall determine information needs necessary to provide a more complete inventory.

4. Make recommendations to the department of education and the general assembly regarding appropriate curricula and staff qualifications and training for early elementary education, coordination of the curricula with child development programs, and the development of an at-risk children definition for use in school-district-sponsored early elementary and before and after school child care programs.

5. Subject to the availability of funds appropriated or otherwise available for the purpose of providing child development services, award grants for programs that provide new or additional child development services to at-risk children.

In awarding program grants to an agency or individual, the council shall consider the following:

a. The quality of the staff and staff background in child development services.

b. The degree to which the program is or will be integrated with existing community resources and has the support of the local community.

c. The ability of the program to provide for child care in addition to child development services for families needing full-day child care.

d. A staff-to-children ratio within the guidelines established under subsection 2, but not less than one staff member per eight children.

e. The degree to which the program involves and works with the parents, and includes home visits, instruction for parents on parenting skills, on enhancement of skills in providing for their children's learning and development, and the physical, mental, and emotional development of children, and experiential education.

f. The manner in which health, medical, dental, and nutrition services are incorporated into the program.

g. The degree to which the program complements existing programs and services for at-risk three-year- and four-year-old children available in the area, including other day-care services, services provided through the school district, and services available through area education agencies.

h. The degree to which the program can be monitored and evaluated to determine its ability to meet its goals.

i. The provision of transportation or other auxiliary services that may be necessary for families to participate in the program.

j. The provision of staff training and development, and staff compensation sufficient to assure continuity.

Program grants funded under this subsection may integrate children not meeting at-risk criteria into the program and shall establish a fee for participation in the program in the manner provided in section 279.49, but grant funds shall not be used to pay the costs for those children.

6. Encourage the submission of grant requests from all potential providers of child development services and shall be flexible in evaluating grants, recognizing that different types of programs may be suitable for different locations in the state. However, requests for grants must contain a procedure for evaluating the effectiveness of the program and accounting procedures for monitoring the expenditure of grant moneys.

The council shall seek to use performance-based measures to evaluate programs. Not more than five percent of any state funds appropriated for child development purposes may be used for administration and evaluation.

7. Encourage the establishment of regional councils designed to facilitate the development on a regional basis of programs for at-risk three-year- and four-year-old children.

8. Annually, submit recommendations to the governor and the general assembly on the need for investment in child development services in the state.

9. Subject to a decision by the council to initiate the programs, develop criteria for and award grants under section 279.51, subsection 2.

10. Encourage the establishment of programs that will enhance the skills of parents in parenting and in providing for the learning and development of their children.

89 Acts, ch 135, §54, 55 HF 535; 89 Acts, ch 206, §8, 9 SF 223

1989 amendments to subsection 5 and new subsections 9 and 10 take effect July 1, 1990; 89 Acts, ch 135, §140 HF 535

Subsection 4 amended

Subsection 5, paragraph e amended

Subsection 5, NEW unnumbered paragraph

NEW subsections 9 and 10

## CHAPTER 257

### FINANCING SCHOOL PROGRAMS

Chapter takes effect July 1, 1990, for purpose of computations required for budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535

Chapter repealed effective July 1, 2001; 89 Acts, ch 135, §135 HF 535

#### 257.1 State school foundation program—state aid.

1. *Program established.* A state school foundation program is established for the school year commencing July 1, 1991, and succeeding school years.

2. *State school foundation aid—foundation base.* For a budget year, each school district in the state is entitled to receive foundation aid, in an amount per pupil equal to the difference between the amount per pupil of foundation property tax in the district, and the combined foundation base per pupil or the combined district cost per pupil, whichever is less. However, if the amount of foundation aid

received by a school district under this chapter is less than three hundred dollars per pupil, the district is entitled to receive three hundred dollars per pupil unless the receipt of three hundred dollars per pupil plus the per pupil amount raised by the foundation property tax exceeds the combined district cost per pupil of the district for the budget year. In that case, the district is entitled to receive an amount per pupil equal to the difference between the per pupil amount raised by the foundation property tax for the budget year and the combined district cost per pupil for the budget year.

For the budget year commencing July 1, 1991, the regular program foundation base per pupil is eighty-three and five-tenths percent of the regular program state cost per pupil. For each succeeding budget year, the regular program foundation base shall increase twenty-five hundredths percent per year until the regular program foundation base reaches eighty-five percent of the regular program state cost per pupil. For the budget year commencing July 1, 1991, the special education support services foundation base is eighty-three and five-tenths percent of the special education support services state cost per pupil. It shall increase at the same rate as the regular program foundation base. The combined foundation base is the sum of the regular program foundation base and the special education support services foundation base.

3. *Computations rounded.* In making computations and payments under this chapter, except in the case of computations relating to funding of special education support services, media services, and educational services provided through the area education agencies, the department of management shall round amounts to the nearest whole dollar.

89 Acts, ch 135, §1 HF 535  
NEW section

## 257.2 Definitions.

As used in this chapter:

1. *"Allowable growth"* means the amount by which state cost per pupil and district cost per pupil will increase from one budget year to the next.
2. *"Base year"* means the school year ending during the calendar year in which a budget is certified.
3. *"Budget adjustment"* is an adjustment to the regular program budget of a school district for school districts in which the regular program budget for a year would be less than its regular program budget for the previous year.
4. *"Budget year"* means the school year beginning during the calendar year in which a budget is certified.
5. *"Combined district cost per pupil"* is an amount determined by adding together the regular program district cost per pupil for a year and the special education support services district cost per pupil for that year as calculated under section 257.10.
6. *"Combined state cost per pupil"* is a per pupil amount determined by adding together the regular program state cost per pupil for a year and the special education support services state cost per pupil for that year as calculated under section 257.9.
7. *"Committee"* means the school budget review committee.
8. *"Expenditures"* means the total amounts paid from the general fund of a school district.
9. *"Miscellaneous income"* means the receipts deposited to the general fund of the school district but not including any of the following:
  - a. Foundation aid.
  - b. Revenue obtained from the foundation property tax.
  - c. Revenue obtained from the additional property tax under section 257.4.

10. "*Property tax adjustment*" means state aid distributed to those school districts in which the property tax revenues generated under this chapter would be higher than the revenues generated under chapter 442, Code 1991.

11. "*School district*" means a school corporation organized under chapter 274.

12. "*Special needs adjustment*" means a state aid payment made by the school budget review committee to school districts who have demonstrated that they have special needs for additional moneys.

13. "*State percent of growth*" means a percent of economic growth determined under this chapter which is based upon an averaging of state and federal growth indicators, and which is used in determining the allowable growth.

89 Acts, ch 135, §2 HF 535  
NEW section

### 257.3 Foundation property tax.

1. *Amount of tax.* Except as provided in subsection 2, a school district shall cause to be levied each year, for the school general fund, a foundation property tax equal to five dollars and forty cents per thousand dollars of assessed valuation on all taxable property in the district. The county auditor shall spread the foundation levy over all taxable property in the district.

2. *Amount for reorganized and dissolved districts.* Reorganized school districts that met the requirements of section 442.2, subsection 1, Code 1989, prior to July 1, 1989, and had reduced property tax rates shall continue to have the reduced levies that they would have had under section 442.2, subsection 1, Code 1989, and those levies shall continue to increase twenty cents per year as provided in that subsection.

3. *Railway corporations.* For purposes of section 257.1, the "*amount per pupil of foundation property tax*" does not include the tax levied under subsection 1 or 2 on the property of a railway corporation, or on its trustee if the corporation has been declared bankrupt or is in bankruptcy proceedings.

89 Acts, ch 135, §3 HF 535  
NEW section

### 257.4 Additional property tax.

1. *Computation of tax.* A school district shall cause an additional property tax to be levied each year. The rate of the additional property tax levy in a school district shall be determined by the department of management and shall be calculated to raise the difference between the combined district cost for the budget year and the sum of the products of the regular program foundation base per pupil times the weighted enrollment in the district and the special education support services foundation base per pupil times the special education support services weighted enrollment in the district.

2. *Application of tax.* No later than May 1 of each year, the department of management shall notify the county auditor of each county the amount, in dollars and cents per thousand dollars of assessed value, of the additional property tax levy in each school district in the county. A county auditor shall spread the additional property tax levy for each school district in the county over all taxable property in the district.

89 Acts, ch 135, §4 HF 535  
NEW section

### 257.5 Continuation of supplemental aid.

For purposes of this section, a reorganized school district is one in which reorganization was approved in an election pursuant to sections 275.18 and 275.20 before July 1, 1989.

A reorganized school district receiving supplemental aid prior to July 1, 1991, under section 442.9A, shall continue to receive supplemental aid in the amount provided under that section for the five-year period specified in that section.

There is appropriated from the general fund of the state to the department of management for each fiscal year an amount sufficient to pay the supplemental aid to school districts under this section. Supplemental aid shall be paid in the manner provided in section 257.16.

For the purpose of the department of management's determination of the portion of a school district's budget that was property tax and the portion that was state aid under section 257.36, supplemental aid shall be considered property tax.

89 Acts, ch 135, §5 HF 535  
NEW section

### 257.6 Enrollment.

1. *Actual enrollment.* Actual enrollment is determined on the third Friday of September in each year and includes all of the following:

a. Resident pupils who were enrolled in public schools within the district in grades kindergarten through twelve and including prekindergarten pupils enrolled in special education programs.

b. Full-time equivalent resident pupils of high school age for which the district pays tuition to attend an Iowa area school.

c. Shared-time and part-time pupils of school age enrolled in public schools within the district, irrespective of the districts in which the pupils reside, 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 nonresident pupil shall be reduced by the amount of any increased state aid received by the district by the counting of the pupil.

d. Eleventh and twelfth grade nonresident pupils who were residents of the district during the preceding school year and are enrolled in the district until the pupils graduate. Tuition for those pupils shall not be charged by the district in which the pupils are enrolled and the requirements of section 282.18 do not apply.

Pupils attending a university laboratory school are not counted in the actual enrollment of a school district, but the laboratory school shall report their enrollment directly to the department of education.

A school district shall certify its actual 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. The department of management shall determine whether a district is entitled to an advance for increasing enrollment on the basis of its actual enrollment.

2. *Basic enrollment.* Basic enrollment for a budget year is a district's actual enrollment for the base year. Basic enrollment for the base year is a district's actual enrollment for the year preceding the base year.

3. *Additional enrollment because of special education.* A school district shall determine its additional enrollment because of special education, as defined in this section, on December 1 of each year and 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.

For the purposes of this chapter, "*additional enrollment because of special education*" is determined by multiplying the weighting of each category of child under section 281.9 times the number of children in each category totaled for all categories minus the total number of children in all categories.

4. *Budget enrollment.* Budget enrollment for the budget year shall be calculated for each school district by the department of management in the manner provided in this subsection. If the basic enrollment of a school district has declined from one year to the next during any of the five years prior to the base year, the district may be eligible for an enrollment adjustment based upon the percent of

the enrollment decline and the number of years that have elapsed since the decline occurred. The budget enrollment for the budget year shall be calculated by adding together the following percents of enrollment decline in the district's basic enrollment from one base year to the preceding base year for each of the five preceding base years, commencing with the percent of change between the basic enrollment for the budget year and the basic enrollment for the base year, adding the sum of the percents to one hundred and multiplying the total by the basic enrollment for the budget year:

Percent of Decline	Years between the Base Year and the Year of Decline				
	1	2	3	4	5
Less than 1	0	0	0	0	0
1.0 through 2.9	2	2	1	1	0
3.0 through 4.9	4	3	2	2	1
5.0 through 6.9	6	5	4	3	2
7.0 and over	8	7	5	4	3

However, if a district's actual enrollment for a budget year is greater than its budget enrollment, the district is eligible for an advance for increasing enrollment as provided in section 257.13.

5. *Weighted enrollment.* Weighted enrollment is the budget enrollment plus the district's additional enrollment because of special education calculated on December 1 of the base year plus additional pupils added due to the application of the supplementary weighting.

Weighted enrollment for special education support services costs is equal to the weighted enrollment minus the additional pupils added due to the application of the supplementary weighting.

89 Acts, ch 135, §6 HF 535  
NEW section

**257.7 Authorized expenditures.**

1. *Budgets.* School districts are subject to chapter 24. The authorized expenditures of a school district during a base year shall not exceed the lesser of the budget for that year certified under section 24.17 plus any allowable amendments permitted in this section, or the authorized budget, which is the sum of the district cost for that year, the actual miscellaneous income received for that year, and the actual unspent balance from the preceding year.

2. *Budget amendments.* If actual miscellaneous income for a budget year exceeds the anticipated miscellaneous income in the certified budget for that year, or if an unspent balance has not been previously certified, a school district may amend its certified budget.

89 Acts, ch 135, §7 HF 535  
NEW section

**257.8 State percent of growth—allowable growth.**

1. *Calculation by department of management.* On or before September 15, 1990, the department of management shall compute a state percent of growth for the budget year beginning July 1, 1991, and a state percent of growth for the year next following the budget year.

On or before each September 15 thereafter, the department of management shall compute a state percent of growth for the budget year next following the budget year. The state percents of growth shall be forwarded to the director of the department of education.

2. *Budget year calculation.* For the budget year commencing July 1, 1991, the state percent of growth is an average of the following four percents of growth in paragraphs "a" and "b" except as otherwise provided in subsection 4:

a. The difference in the percents of change in receipts of state general fund revenues, computed or estimated by the state revenue estimating conference created in section 8.22A as follows:

(1) The percent 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 percent of change between the revenues received during the year preceding the base year and the revenues received during the base year.

For the purpose of this lettered paragraph, receipts of state general fund revenues do not include one-time nonrecurring receipts or receipts that are accounting transactions made to meet the requirements of 1986 Iowa Acts, chapter 1238, section 59.

b. The difference in the gross national product implicit price deflators, based to the extent possible on the latest available values for these deflators, published by the bureau of economic analysis, United States department of commerce, computed or estimated as a percent of change as follows:

(1) From the value for the year ending December 31 eighteen months before the beginning of the base year to the value for the year ending December 31 six months before the beginning of the base year.

(2) From the value for the year ending December 31 six months before the beginning of the base year to the value for the year ending December 31 in the base year.

3. *Calculation for year following budget year.* For the year following the budget year, the state percent of growth is an average of the following four percents of growth in paragraphs "a" and "b", except as provided in subsection 4:

a. The difference in the percents of change in receipts of state general fund revenues computed or estimated by the state revenue estimating conference created in section 8.22A as follows:

(1) The percent of change between the revenues received during the year preceding the base year and the revenues received during the base year.

(2) The percent of change between the revenues received during the base year and the revenues received during the budget year.

For the purpose of this lettered paragraph, receipts of state general fund revenues do not include one-time nonrecurring receipts or receipts that are accounting transactions made to meet the requirements of 1986 Iowa Acts, chapter 1238, section 59.

b. The difference in the gross national product implicit price deflators, based to the extent possible on the latest available values for those deflators published by the bureau of economic analysis, United States department of commerce, computed or estimated as a percent of change as follows:

(1) From the value for the year ending December 31 six months before the beginning of the base year to the value for the year ending December 31 six months before the beginning of the budget year.

(2) From the value for the year ending December 31 six months before the beginning of the budget year to the value for the year ending December 31 during the budget year.

4. *Exception.* If the average of the percents computed or estimated under paragraph "b" of subsection 2 or 3 exceeds the average of the percents computed or estimated under paragraph "a" of the applicable subsection, the state percent of growth for that budget year shall be the average of the two percents of growth computed or estimated under paragraph "a" of the applicable subsection.

5. *Negative percent.* If the state percent of growth computed for a budget year is negative, that percent shall not be used and the state percent of growth shall be zero.

6. *Recomputation.* On or before September 15 of the base year 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 previous year and the original computation shall be added to or subtracted from the state percent of growth for the budget year next following the budget year, as applicable. However, on or before September 15, 1990, the department of management shall recompute the state percent of growth for the previous year in the manner provided in section 442.7, Code 1989.

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 year which occurred subsequent to the calculation of the state percent of growth for the previous year. If subsection 4 is used in the calculation of the state percent of growth for the previous year, the calculation made in subsection 3, paragraph "b", shall not be used in the recomputation of the state percent of growth for the previous year.

7. *Allowable growth calculation.* The department of management shall calculate the regular program allowable growth for a budget year by multiplying the state percent of growth for the budget year by the regular program state cost per pupil for the base year and shall calculate the special education support services allowable growth for the budget year by multiplying the state percent of growth for the budget year by the special education support services state cost per pupil for the base year.

8. *Combined allowable growth.* The combined allowable growth per pupil for each school district is the sum of the regular program allowable growth per pupil and the special education support services allowable growth per pupil for the budget year, which may be modified as follows:

- a. By the school budget review committee under section 257.31.
- b. By the department of management under section 257.36.

89 Acts, ch 135, §8 HF 535  
NEW section

### **257.9 State cost per pupil.**

1. *Regular program state cost per pupil for 1991-1992.* For the budget year beginning July 1, 1991, for the regular program state cost per pupil, the department of management shall add together the state total of the district costs of all school districts for the base year, as district cost is defined in section 442.9, Code 1989, plus the total of the amounts added to the district cost of school districts pursuant to section 442.21, Code 1989, plus the amount included in the districts' budgets in the state for the fiscal year beginning July 1, 1986, for the additional portion of the livestock tax credit pursuant to section 442.2, subsection 2, as it appeared in the 1987 Code and plus the difference between the following amounts:

- a. The general allocation of the school district as determined under section 405A.2, Code 1989.
- b. The foundation property tax rate multiplied by the total actual value of all personal property assessed for valuation in the school district as of January 1, 1973, excluding livestock.

The total calculated under this subsection shall be divided by the total of the budget enrollments of all school districts for the budget year beginning July 1, 1990, calculated under section 257.6, subsection 4, if section 257.6, subsection 4, had been in effect for that budget year. The regular program state cost per pupil for the budget year beginning July 1, 1991, is the amount calculated by the department of management under this subsection plus an allowable growth amount that is equal to the state percent of growth for the budget year multiplied by the amount calculated by the department of management under this subsection.

2. *Regular program state cost per pupil for 1992-1993 and succeeding years.* For the budget year beginning July 1, 1992, and succeeding budget years, the regular program state cost per pupil for a budget year is the regular program state cost per pupil for the base year plus the regular program allowable growth for the budget year.

3. *Special education support services state cost per pupil for 1991-1992.* For the budget year beginning July 1, 1991, for the special education support services state cost per pupil, the department of management shall divide the total of the approved budgets of the area education agencies for special education support services for that year approved by the state board of education under section 273.3, subsection 12, by the total of the weighted enrollment for special education support services in the state for the budget year. The special education support services state cost per pupil for the budget year is the amount calculated by the department of management under this subsection.

4. *Special education support services state cost per pupil for 1992-1993 and succeeding years.* For the budget year beginning July 1, 1992, and succeeding budget years, the special education support services state cost per pupil for the budget year is the special education support services state cost per pupil for the base year plus the special education support services allowable growth for the budget year.

5. *Combined state cost per pupil.* The combined state cost per pupil is the sum of the regular program state cost per pupil and the special education support services state cost per pupil.

89 Acts, ch 135, §9 HF 535  
NEW section

### **257.10 District cost per pupil—district cost.**

1. *Regular program district cost per pupil for 1991-1992.* For the budget year beginning July 1, 1991, in order to determine the regular program district cost per pupil, the department of management shall divide the regular program district cost for the base year, as defined in section 442.9, Code 1989, plus the amount added to district cost pursuant to section 442.21, Code 1989, for each school district, by the budget enrollment of the school district for the budget year beginning July 1, 1990, calculated under section 257.6, subsection 4, as if section 257.6, subsection 4, had been in effect for that budget year. The regular program district cost per pupil for the budget year beginning July 1, 1991, is the amount calculated by the department of management under this subsection plus the allowable growth amount calculated for regular program state cost per pupil, except that if the regular program district cost per pupil for the budget year calculated under this subsection in any school district exceeds one hundred ten percent of the regular program state cost per pupil for the budget year, the department of management shall reduce the regular program district cost per pupil of that district to an amount equal to one hundred ten percent of the state cost per pupil, and if the regular program district cost per pupil for the budget year calculated under this subsection is less than the regular program state cost per pupil, the regular program district cost per pupil shall be increased to the regular program state cost per pupil.

2. *Regular program district cost per pupil for 1992-1993 and succeeding years.*

a. For the budget year beginning July 1, 1992, and succeeding budget years, the regular program district cost per pupil for each school district for a budget year is the regular program district cost per pupil for the base year plus the regular program allowable growth for the budget year except as otherwise provided in this subsection.

b. If the regular program district cost per pupil of a school district for the budget year under paragraph "a" exceeds one hundred five percent of the regular program state cost per pupil for the budget year and the state percent of growth

for the budget year is greater than two percent, the regular program district cost per pupil for the budget year for that district shall be reduced to one hundred five percent of the regular program state cost per pupil for the budget year. However, if the difference between the regular program district cost per pupil for the budget year and the regular program state cost per pupil for the budget year is greater than an amount equal to two percent multiplied by the regular program state cost per pupil for the base year, the regular program district cost per pupil for the budget year shall be reduced by the amount equal to two percent multiplied by the regular program state cost per pupil for the base year.

3. *Special education support services district cost per pupil for 1991-1992.* For the budget year beginning July 1, 1991, for the special education support services district cost per pupil, the department of management shall divide the approved budget of each area education agency for special education support services for that year approved by the state board of education, under section 273.3, subsection 12, by the total of the weighted enrollment for special education support services in the area for that budget year.

The special education support services district cost per pupil for each school district in an area for the budget year is the amount calculated by the department of management under this subsection.

4. *Special education support services district cost per pupil for 1992-1993 and succeeding years.* For the budget year beginning July 1, 1992, and succeeding budget years, the special education support services district cost per pupil for the budget year is the special education support services district cost per pupil for the base year plus the special education support services allowable growth for the budget year.

5. *Combined district cost per pupil.* The combined district cost per pupil for a school district is the sum of the regular program district cost per pupil and the special education support services district cost per pupil. Combined district cost per pupil does not include additional allowable growth added for school districts that have a negative balance of funds raised for special education instruction programs, additional allowable growth granted by the school budget review committee for a single school year, or additional allowable growth added for programs for dropout prevention and for programs for gifted and talented children.

6. *Regular program district cost.* Regular program district cost for a school district for a budget year is equal to the regular program district cost per pupil for the budget year multiplied by the weighted enrollment for the budget year.

7. *Special education support services district cost.* Special education support services district cost for a school district for a budget year is equal to the special education support services district cost per pupil for the budget year multiplied by the special education support services weighted enrollment for the district for the budget year. If the special education support services district cost for a school district for a budget year is less than the special education support services district cost for that district for the base year, the department of management shall adjust the special education support services district cost for that district for the budget year to equal the special education support services district cost for the base year.

8. *Combined district cost.* Combined district cost is the sum of the regular program district cost and the special education support services district cost, plus the additional district cost allocated to the district to fund media services and educational services provided through the area education agency.

A school district may increase its district cost for the budget year to the extent that an excess tax levy is authorized by the school budget review committee.

### 257.11 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, which use the services of a teacher employed by another school district, or which jointly employ and share the services of a school superintendent under section 280.15 or 273.7A, a supplementary weighting plan for determining enrollment is adopted as follows:

1. *Regular curriculum.* Pupils in a regular curriculum attending all their classes in the district in which they reside, taught by teachers employed by that district, and having administrators employed by that district, are assigned a weighting of one.

2. *Shared classes or teachers.* 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, 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 an additional portion equal to one 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.

3. *Whole grade sharing.* For the budget years beginning July 1, 1991, and July 1, 1992, in districts that have executed whole grade sharing agreements under sections 282.10 through 282.12, the school budget review committee shall assign an additional weighting equal to one plus an additional portion of one 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. The assignment of additional weighting to a school district shall continue for a period of five years. If the school district reorganizes during that five-year period, the assignment of the additional weighting shall be transferred to the reorganized district until the expiration of the five-year period. If a school district was receiving additional weighting for whole grade sharing under section 442.39, subsection 2, Code 1989, the district shall continue to be assigned additional weighting for whole grade sharing by the school budget review committee under this subsection so that the district is assigned the additional weighting for whole grade sharing for a total period of five years.

4. *Pupils ineligible.* A pupil eligible for the weighting plan provided in section 281.9 is not eligible for the weighting plan provided in this section.

5. *Shared superintendents.* For the budget years beginning July 1, 1991, and July 1, 1992, pupils enrolled in a school district in which the superintendent is employed jointly under section 280.15 or under section 273.7A, are assigned a weighting of one plus an additional portion of one for the superintendent who is jointly employed times the percent of the superintendent's time in which the superintendent is employed in the school district. However, the total additional weighting assigned under this subsection for a budget year for a school district shall not exceed seven and one-half and the total additional weighting added cumulatively to the enrollment of school districts sharing a superintendent shall not exceed twelve and one-half. The assignment of additional weighting to a school district shall continue for a period of five years. If the school district reorganizes during that five-year period, the assignment of the additional weighting shall be transferred to the reorganized district until the expiration of the five-year period.

If a district was receiving additional weighting for superintendent sharing or administrator sharing under section 442.39, subsection 4, Code 1989, the district shall continue to be assigned additional weighting for superintendent sharing or administrator sharing by the school budget review committee under this subsection so that the district is assigned the additional weighting for sharing for a total period of five years.

6. *Shared mathematics, science, and language courses.* For the budget years beginning July 1, 1991, and July 1, 1992, a school district receiving additional funds under subsection 2 or 3 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.

7. *Calculation of weights.* The school budget review committee shall calculate the weights to be used under subsections 2 and 3 to the nearest one-hundredth of one and under subsection 5 to the next highest one-thousandth of one. To the extent possible, the moneys generated by the weighting shall be equivalent to the moneys generated by the one-tenth, five-tenths, and twenty-five thousandths weighting provided in section 442.39, Code 1989.

89 Acts, ch 135, §11 HF 535  
NEW section

### **257.12 Supplementary weighting and school reorganization.**

A reorganized school district in which additional pupils were added under section 442.39A, Code 1989, shall continue to have additional pupils added, subject to changes in weighting made under section 257.11, until the expiration of the five-year period provided in section 442.39A, Code 1989.

89 Acts, ch 135, §12 HF 535  
NEW section

### **257.13 Advance for increasing enrollment.**

If a district's actual enrollment for the budget year, determined under section 257.6, is greater than its budget enrollment for the budget year, the district is granted an advance from the state of an amount equal to its regular program district cost per pupil for the budget year multiplied by the difference between the actual enrollment for the budget year and the budget enrollment for the budget year. The advance is miscellaneous income.

If a district receives an advance under this section for a budget year, the department of management shall determine the amount of the advance which would have been generated by local property tax revenues if the actual enrollment for the budget year had been used in determining district cost for that budget year, shall reduce the district's total state school aids otherwise available under this chapter for the next following budget year by the amount so determined, and shall increase the district's additional property tax levy for the next following budget year by the amount necessary to compensate for the reduction in state aid, so that the local property tax for the next following year will be increased only by the amount which it would have been increased in the budget year if the enrollment calculated in this section could have been used to establish the levy.

There is appropriated each fiscal year from the general fund of the state to the department of education the amount required to pay advances authorized under this section, which shall be paid to school districts in the same manner as other state aids are paid under section 257.16.

89 Acts, ch 135, §13 HF 535  
NEW section

### **257.14 Budget adjustment.**

For the budget years commencing July 1, 1991, and July 1, 1992, if the department of management determines that the regular program district cost of

a school district for a budget year is less than the total of the regular program district cost plus any adjustment added under this section for the base year for that school district, the department of management shall provide a budget adjustment for that district for that budget year that is equal to the difference.

For the budget year beginning July 1, 1991, the department of management shall use the regular program district cost for that budget year of a school district calculated pursuant to chapter 442, Code 1989, plus the amount added to district cost pursuant to section 442.21, Code 1989, as the district's base year regular program district cost.

89 Acts, ch 135, §14 HF 535  
NEW section

### **257.15 Property tax adjustment.**

1. *Property tax adjustment for 1991-1992.* For the budget year beginning July 1, 1991, the department of management shall calculate for each district the difference between the sum of the revenues generated by the foundation property tax and the additional property tax in the district calculated under this chapter and the revenues that would have been generated by the foundation property tax and the additional property tax in that district for that budget year calculated under chapter 442, Code 1989, if chapter 442 were in effect, except that the revenues that would have been generated by the additional property tax levy under chapter 442 shall not include revenues generated for the school improvement program. If the property tax revenues for a district calculated under this chapter exceed the property tax revenues for that district calculated under chapter 442, Code 1989, the department of management shall reduce the revenues raised by the additional property tax levy in that district under this chapter by that difference and the department of education shall pay property tax adjustment aid to the district equal to that difference from moneys appropriated for property tax adjustment aid.

2. *Property tax adjustment aid for 1992-1993 and succeeding years.* For the budget year beginning July 1, 1992, and succeeding budget years, the department of education shall pay property tax adjustment aid to a school district equal to the amount paid to the district for the base year less an amount equal to the product of the percent by which the taxable valuation in the district increased, if the taxable valuation increased, from January 1 of the year prior to the base year to January 1 of the base year and the property tax adjustment aid. The department of management shall adjust the rate of the additional property tax accordingly and notify the department of education of the amount of aid to be paid to each district from moneys appropriated for property tax adjustment aid.

3. *Property tax adjustment aid appropriation.* There is appropriated from the general fund of the state to the department of education, for each fiscal year, an amount necessary to pay property tax adjustment aid to school districts under this section. Property tax adjustment aid shall be paid to school districts in the manner provided in section 257.16.

89 Acts, ch 135, §15 HF 535  
NEW section

### **257.16 Appropriations.**

There is appropriated each year from the general fund of the state an amount necessary to pay the foundation aid.

All state aids paid under this chapter, unless otherwise stated, shall be paid in monthly installments beginning on September 15 of a budget year and ending on June 15 of the budget year and the installments shall be as nearly equal as possible as determined by the department of management, taking into consideration the relative budget and cash position of the state resources. However, the

state aid paid to school districts under section 257.13 shall be paid in monthly installments beginning on December 15 and ending on June 15 of a budget year.

All moneys received by a school district from the state under this chapter shall be deposited in the general fund of the school district, and may be used for any school general fund purpose.

89 Acts, ch 135, §16 HF 535  
NEW section

### **257.17 Aid reduction for early school starts.**

State aid payments made pursuant to section 257.16 for a fiscal year shall be reduced by one one-hundred-eightieth for each day of that fiscal year for which the school district begins school before the earliest starting date specified in section 279.10, subsection 1. However, this section does not apply to a school district that has received approval from the director of the department of education under section 279.10, subsection 4, to commence classes for regularly established elementary and secondary schools in advance of the starting date established in section 279.10, subsection 1.

89 Acts, ch 135, §17 HF 535  
NEW section

### **257.18 Instructional support program.**

1. An instructional support program that provides additional funding for school districts is established. A board of directors that wishes to consider participating in the instructional support program shall hold a public hearing on the question of participation. The board shall set forth its proposal, including the method that will be used to fund the program, in a resolution and shall publish the notice of the time and place of a public hearing on the resolution. Notice of the time and place of the public hearing shall be published in one or more newspapers not less than ten nor more than twenty days before the public hearing. For the purpose of establishing and giving assured circulation to the proceedings, only a newspaper which is a newspaper of general circulation issued at a regular frequency, distributed in the school district's area, and regularly delivered or mailed through the post office during the preceding two years may be used for the publication. In addition, the newspaper must have a list of subscribers who have paid, or promised to pay, at more than a nominal rate, for copies to be received during a stated period. At the hearing, the board shall announce a date certain, no later than thirty days after the date of the hearing, that it will take action to adopt a resolution to participate in the instructional support program for a period not exceeding five years or to direct the county commissioner of elections to call an election to submit the question of participation in the program for a period not exceeding ten years to the qualified electors of the school district at the next following regular school election in the base year or a special election held not later than December 1 of the base year. If the board calls an election on the question of participation, if a majority of those voting on the question favors participation in the program, the board shall adopt a resolution to participate and certify the results of the election to the department of management.

2. If the board does not provide for an election and adopts a resolution to participate in the instructional support program, the district shall participate in the instructional support program unless within twenty-eight days following the action of the board, the secretary of the board receives a petition containing the required number of signatures, asking that an election be called to approve or disapprove the action of the board in adopting the instructional support program. The petition must be signed by eligible electors equal in number to not less than one hundred or thirty percent of the number of voters at the last preceding regular school election, whichever is greater. The board shall either rescind its action or direct the county commissioner of elections to submit the question to the qualified

electors of the school district at the next following regular school election or a special election held not later than December 1 of the base year. If a majority of those voting on the question at the election favors disapproval of the action of the board, the district shall not participate in the instructional support program. If a majority of those voting on the question favors approval of the action, the board shall certify the results of the election to the department of management and the district shall participate in the program.

At the expiration of the twenty-eight day period, if no petition is filed, the board shall certify its action to the department of management and the district shall participate in the program.

89 Acts, ch 135, §18 HF 535  
NEW section

### **257.19 Instructional support funding.**

The additional funding for the instructional support program for a budget year is limited to an amount not exceeding ten percent of the total of regular program district cost for the budget year and moneys received under section 257.14 as a budget adjustment for the budget year. Moneys received by a district for the instructional support program are miscellaneous income and may be used for any general fund purpose.

Certification of a board's intent to participate for a budget year, the method of funding, and the amount to be raised shall be made to the department of management not later than March 15 of the base year. Funding for the instructional support program shall be obtained from instructional support state aid and from local funding using either an instructional support property tax or a combination of an instructional support property tax and an instructional support income surtax.

The board of directors shall determine whether the instructional support property tax or the combination of the instructional support property tax and instructional support income surtax shall be used for the local funding. Subject to the limitation specified in section 298.14, if the board elects to use the combination of the instructional support property tax and instructional support income surtax, for each budget year the board shall determine the percent of income surtax that will be imposed, expressed as full percentage points, not to exceed twenty percent.

89 Acts, ch 135, §19 HF 535  
NEW section

### **257.20 Instructional support state aid appropriation.**

In order to determine the amount of instructional support state aid and the amount of local funding for the instructional support program for a district, the department of management shall divide the total assessed valuation in the state by the total budget enrollment for the budget year in the state to determine a state assessed valuation per pupil and shall divide the assessed valuation in each district by the district's budget enrollment for the budget year to determine the district assessed valuation per pupil. The department of management shall multiply the ratio of the state's valuation per pupil to the district's valuation per pupil by twenty-five hundredths and subtract that result from one to determine the portion of the instructional support program budget that is local funding. The remaining portion of the budget shall be funded by instructional support state aid.

There is appropriated for each fiscal year from the general fund of the state to the department of education, an amount necessary to pay instructional support state aid as provided in this section. Instructional support state aid shall be paid at the same time and in the same manner as foundation aid is paid under section 257.16.

89 Acts, ch 135, §20 HF 535  
NEW section

**257.21 Computation of instructional support amount.**

The department of management shall establish the amount of instructional support property tax to be levied and the amount of instructional support income surtax to be imposed by a district in accordance with the decision of the board under section 257.19 for each school year for which the instructional support program 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 instructional support property tax, and to the director of revenue and finance the amount of instructional support income surtax to be imposed if an instructional support income surtax is to be imposed.

The instructional support 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 and after the date the board adopts a resolution to participate in the program 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 through 422.12.

89 Acts, ch 135, §21 HF 535  
Limit on total surtax, §298.14  
NEW section

**257.22 Statutes applicable.**

The director of revenue and finance shall administer the instructional support income surtax imposed under this chapter, and sections 422.20, 422.22 to 422.31, 422.68, and 422.72 to 422.75 shall apply with respect to administration of the instructional support income surtax.

89 Acts, ch 135, §22 HF 535  
NEW section

**257.23 Form and time of return.**

The instructional support income surtax shall be made a part of the Iowa individual income tax return subject to the conditions and restrictions set forth in section 422.21.

89 Acts, ch 135, §23 HF 535  
NEW section

**257.24 Deposit of instructional support income surtax.**

The director of revenue and finance shall deposit all moneys received as instructional support income surtax to the credit of each district from which the moneys are received, in the school district income surtax fund which is established in section 298.14.

The director of revenue and finance shall deposit instructional support income surtax moneys received on or before November 1 of the year following the close of the school budget year for which the surtax is imposed to the credit of each district from which the moneys are received in the school district income surtax fund.

Instructional support income surtax moneys received or refunded after November 1 of the year following the close of the school budget year for which the surtax is imposed shall be deposited in or withdrawn from the general fund of the state and shall be considered part of the cost of administering the instructional support income surtax.

89 Acts, ch 135, §24 HF 535  
NEW section

**257.25 Instructional support income surtax certification.**

On or before October 20 each year, the director of revenue and finance shall make an accounting of the instructional support income surtax collected under

this chapter applicable to tax returns for the last preceding calendar year, or for a taxpayer's fiscal year ending during the second half of that calendar year and after the date the board adopts a resolution to participate in the program, or the first half of the succeeding calendar year, from taxpayers in each school district in the state which has approved the instructional support program, and shall certify to the department of management and the department of education the amount of total instructional support income surtax credited from the taxpayers of each school district.

89 Acts, ch 135, §25 HF 535  
NEW section

#### **257.26 Instructional support income surtax distribution.**

The director of revenue and finance shall draw warrants in payment of the amount of instructional support surtax in the manner provided in section 298.14.

89 Acts, ch 135, §26 HF 535  
NEW section

#### **257.27 Continuation of instructional support program.**

At the expiration of the period for which the instructional support program was adopted, the program may be extended for a period of not exceeding five or ten years in the manner provided in section 257.18.

If the voters do not approve adoption of the instructional support program, the board shall wait at least one hundred twenty days following the election before taking action to adopt the program or resubmit the proposition.

89 Acts, ch 135, §27 HF 535  
NEW section

#### **257.28 Enrichment levy.**

If a school district has approved the use of the instructional support program for a budget year, the district shall not also collect moneys under the additional enrichment amount approved by the voters under chapter 442, for that budget year.

89 Acts, ch 135, §28 HF 535  
NEW section

#### **257.29 Educational improvement program.**

An educational improvement program is established to provide additional funding for school districts in which the district cost per pupil for a budget year is one hundred ten percent of the state cost per pupil for the budget year and which have approved the use of the instructional support program established in section 257.18. A board of directors that wishes to consider participating in the educational improvement program shall hold a hearing on the question of participation and the maximum percent of the district cost of the district that will be used. The hearing shall be held in the manner provided in section 257.18 for the instructional support program. Following the hearing, the board may direct the county commissioner of elections to submit the question to the qualified electors of the school district at the next following regular school election or a special election held not later than the following February 1. If a majority of those voting on the question favors participation in the program, the board shall adopt a resolution to participate and shall certify the results of the election to the department of management and the district shall participate in the program. If a majority of those voting on the question does not favor participation, the district shall not participate in the program.

The educational improvement program shall provide additional revenues each fiscal year equal to a specified percent of the district cost of the district, as determined by the board. Certification of a district's participation for a budget year, the method of funding, and the amount to be raised shall be made to the department of management not later than March 15 of the base year.

The educational improvement program shall be funded by either an educational improvement property tax or by a combination of an educational improvement property tax and an educational improvement income surtax. The method of raising the educational improvement moneys shall be determined by the board. Subject to the limitation in section 298.14, if the board uses a combination of an educational improvement property tax and an educational improvement income surtax, the board shall determine the percent of income surtax to be imposed, expressed as full percentage points, not to exceed twenty percent.

The department of management shall establish the amount of the educational improvement property tax to be levied or the amount of the combination of the educational improvement property tax to be levied and the amount of the school district income surtax to be imposed for each school year that the educational improvement amount is authorized. The educational improvement property tax and income surtax, if an income surtax is imposed, shall be levied and imposed, collected, and paid to the school district in the manner provided for the instructional support program in sections 257.21 through 257.26. Moneys received by a school district under the educational improvement program are miscellaneous income.

Once approved at an election, the authority of the board to use the educational improvement program shall continue until the board votes to rescind the educational improvement program or the voters of the school district by majority vote order the discontinuance of the program. The board shall call an election to vote on the proposition whether to discontinue the program upon the receipt of a petition signed by not less than one hundred eligible electors or thirty percent of the number of electors voting at the last preceding school election, whichever is greater.

89 Acts, ch 135, §29 HF 535  
Limit on total surtax, §298.14  
NEW section

### **257.30 School budget review committee.**

A school budget review committee is established in the department of education and consists of the director of the department of education, the director of the department of management, and three members who are knowledgeable in the areas of Iowa school finance or public finance issues appointed by the governor to represent the public. At least one of the public members shall possess a master's or doctoral degree in which areas of school finance, economics, or statistics are an integral component, or shall have equivalent experience in an executive administrative or senior research position in the education or public administration field. The members appointed by the governor shall serve staggered three-year terms beginning and ending as provided in section 69.19 and are subject to senate confirmation as provided in section 2.32. The committee shall meet and hold hearings each year and shall continue in session until it has reviewed budgets of school districts, as provided in section 257.31. It may call in school board members and employees as necessary for the hearings. Legislators shall be notified of hearings concerning school districts in their constituencies.

The committee shall adopt its own rules of procedure under chapter 17A. The director of the department of education shall serve as chairperson, and the director of the department of management shall serve as secretary. The committee members representing the public are entitled to receive their necessary expenses while engaged in their official duties. Members shall be paid a per diem at the rate specified in section 7E.6. Per diem and expense payments shall be made from appropriations to the department of education.

The department of education shall employ a staff member to assist the school budget review committee.

89 Acts, ch 135, §30 HF 535  
NEW section

### 257.31 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. Not later than January 1, 1992, the committee shall adopt recommendations relating to the implementation by school districts and area education agencies of procedures pertaining to the preparation of financial reports in conformity with generally accepted accounting principles and submit those recommendations to the state board of education. The state board shall consider the recommendations and adopt rules under section 256.7 specifying procedures and requiring the school districts and area education agencies to conform to generally accepted accounting principles commencing with the school year beginning July 1, 1996.

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 the purposes of this subsection, 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 initial staffing problems.
- d. The closing of a nonpublic school, wholly or in part.
- e. Substantial reduction in miscellaneous income due to circumstances beyond the control of the district.
- f. Unusual necessity for additional funds to permit continuance of a course or program which provides substantial benefit to pupils.
- g. Unusual need for a new course or program which will provide substantial benefit to pupils, if the district establishes the need and the amount of necessary increased cost.
- h. Unusual need for additional funds for special education or compensatory education programs.
- i. 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.
- j. Unusual need to continue providing a program or other special assistance to non-English speaking pupils after the expiration of the three-year period specified in section 280.4.
- k. Circumstances caused by unusual demographic characteristics.

l. Any unique problems of school districts.

6. The committee may grant transportation assistance aid to a school district from funds appropriated in this subsection for the purpose of providing additional funds for a budget year to school districts that have costs for mandatory school transportation based upon the cost per pupil transported that exceed one hundred ten percent of the state average cost of mandatory school transportation based upon the cost per pupil transported. School districts shall submit to the department of education the cost of providing mandatory school transportation in their transportation report filed by July 15 after each school year. The committee shall prioritize the requests of school districts ranking the districts by their mandatory transportation costs based upon the costs per pupil transported with consideration given to the geographic size of the district. Within the limits of the funds appropriated in this subsection, the committee shall pay transportation assistance to those districts ranked in the highest priority based upon the criteria listed in this subsection. The committee shall adopt rules under chapter 17A establishing a procedure for prioritizing requests. Transportation assistance payments are equal to the amount that each district's cost of mandatory transportation based upon the cost per pupil transported exceeds one hundred ten percent of the state average cost of transportation based upon the cost per pupil transported multiplied by the number of pupils transported. Payment for a school year shall be made by September 1 after each school year.

School districts shall also submit in their transportation report long-term plans to reduce their transportation costs. The long-term plans may include, but are not limited to, more efficient use of transportation resources, consolidation of transportation systems, or contracting with regional municipal or private transit systems. The school budget review committee shall review the long-range plans and make recommendations concerning reducing transportation costs to the school districts.

There is appropriated from the general fund of the state to the department of education for the use of the school budget review committee, for each fiscal year, the amount of three million five hundred thousand dollars, or as much thereof as may be necessary, to pay the transportation assistance to school districts ranked in the highest priority under this subsection.

7. The committee shall establish a modified allowable growth for a district by increasing its allowable growth when the district submits evidence that it requires additional funding for removal, management, or abatement of environmental hazards due to a state or federal requirement. Environmental hazards shall include but are not limited to the presence of asbestos, radon, or the presence of any other hazardous material dangerous to health and safety.

The district shall include a budget for the actual cost of the project that may include the costs of inspection, reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, developing of management plans, recordkeeping requirements, and encapsulation or removal of the hazardous material.

8. The committee may authorize a district to spend a reasonable and specified amount from its unexpended cash balance for either of the following purposes:

a. 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 the tax levy provided in section 298.2.

b. The costs associated with the demolition of an unused school building, or the conversion of an unused school building for community use, in a school district involved in a dissolution or reorganization under chapter 275, if the costs are incurred within three years of the dissolution or reorganization.

Other expenditures, including but not limited to expenditures for salaries or recurring costs, are not authorized under this subsection. Expenditures autho-

rized 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 the amount not actually spent for the authorized purpose shall revert to its former status as part of the unexpended cash balance.

9. The committee may approve or modify the initial base year district cost of any district which changes accounting procedures.

10. When the committee makes a decision under subsections 3 through 9, 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 department of education.

11. A special needs adjustment program is established to be administered by the committee. A school district or area education agency is eligible to request additional funding for a budget year from moneys appropriated in this subsection if it submits evidence to the committee not later than December 15 of the base year that it has special needs that cannot be met through other funding sources available to it. A school district is eligible only if it meets the requirements specified in paragraphs "a" and "b". An area education agency is eligible only if it meets the requirements specified in paragraph "c".

a. A school district must meet the following requirements:

(1) If the request for additional funding relates to approved expenditures from the general operating fund, the district must have approved the instructional support program for the maximum amount.

(2) If the request for additional funding relates to expenditures from the schoolhouse fund, the district must have approved the use of the voter-approved physical plant and equipment levy for the maximum amount.

(3) If the request for additional funding relates to a need included in subsection 5, the district must have been denied additional funding under subsection 5 or received inadequate additional funding under subsection 5.

(4) Notwithstanding subparagraph 1, if the request for additional funding relates to expenditures for programs for gifted and talented children, the committee must have approved the maximum amount of additional allowable growth for programs for gifted and talented children.

(5) Notwithstanding subparagraph 1, if the request for additional funding relates to expenditures for programs for dropout prevention, the committee must have approved the maximum amount of additional allowable growth for programs for dropout prevention.

(6) If the expenditures of the school district for executive administration as a percent of the district's operating fund for the base year are equal to or less than one hundred ten percent of the average for the base year expenditures for executive administration of all school districts in the state as a percent of their operating funds.

b. A school district must meet at least one of the following criteria:

(1) The district is experiencing significant difficulty in meeting minimum state educational standards.

(2) The district is greater in area than one hundred fifty square miles.

(3) The district is experiencing extraordinary problems demonstrably linked to the demographic characteristics of that district.

(4) The average elementary or secondary pupil-teacher ratio of that district is greater than one hundred fifty percent of the state average pupil-teacher ratio.

c. An area education agency must meet the requirements that there are fewer than three and one-half public school pupils per square mile in the area education agency and the ratio of public school pupils to each professional staff member is substantially fewer than that ratio in other area education agencies. If the request for additional funding relates to a need included in section 257.32, the area

education agency must have been denied additional funding under section 257.32 or received inadequate additional funding under section 257.32. Approved payments to area education agencies shall be paid before payments are made to school districts.

*d.* There is appropriated from the general fund of the state to the department of education for the use of the committee for each fiscal year the sum of five million dollars, or so much thereof as may be necessary, to be used for distribution to area education agencies and school districts under this subsection. Not more than three hundred thousand dollars of the moneys appropriated in this paragraph shall be distributed to area education agencies.

If the moneys appropriated in this paragraph are reduced by the general assembly, the three hundred thousand dollar allocation for area education agencies shall be proportionally reduced.

12. 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.

13. 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.

14. 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 pursuant to section 281.9, and report the plan to the director of the department of education.

15. 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.

16. 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 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 excess 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 came from 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 257.4 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 for each fiscal year an amount equal to the state aid portion of five percent of the receipts for special education instruction programs in all districts that has a positive balance determined under paragraph "a" for the base year, or the state aid portion of all of the positive balances determined under paragraph "a" for the base year, whichever is less, to be used for supplemental aid payments to school districts. Except as otherwise provided in this lettered paragraph, supplemental aid paid to a district is equal to the state aid portion of the district's negative balance. The school budget review committee shall direct the director of the department of management to make the payments to school districts under this lettered paragraph.

A school district is only 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 notify 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 under this subsection. 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 under this subsection, the director of the department of management shall prorate the payments on the basis of the amount appropriated.

17. Annually the school budget review committee shall review the amount of property tax levied by each school district for the 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 257.4 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.

18. The committee shall perform the duties assigned to it under chapter 286A and section 257.32.

89 Acts, ch 135, §31 HF 535  
NEW section

### **257.32 Area education budget review.**

1. An area education agency budget review procedure is established for the school budget review committee created in section 257.30. The school budget review committee, in addition to its duties under section 257.31, shall meet and hold hearings each year to review unusual circumstances of area education agencies, either upon the committee's motion or upon the request of an area education agency. The committee may grant supplemental aid to the area

education agency from funds appropriated to the department of education for area education agency budget review purposes, or an amount may be added to the area education agency special education support services allowable growth for districts in an area or an additional amount may be added to district cost for media services or educational services for all districts in an area for the budget year either on a temporary or permanent basis, or both.

Unusual circumstances shall include but are not limited to the following:

a. An unusual increase or decrease in enrollment of children requiring special education or unusual need for additional moneys for special education support services.

b. Unusual need for additional moneys for media services.

c. Unusual need for additional moneys for educational services.

d. Unusual costs for building repair, building maintenance, or removal of environmental hazards.

e. Participation by the area education agency in telecommunications, electronic, and technological development with school districts, and related staff development programs.

2. When the school budget review committee makes a decision under subsection 1, it shall provide written notice of its decision, including all changes, to the board of directors of the area education agency, and to the department of management and the department of education.

3. All decisions by the school budget review committee under this section shall be made in accordance with reasonable and uniform policies which shall be consistent with this chapter.

4. Failure by an area education agency to provide information or appear before the school budget review committee as requested for the accomplishment of review or hearing constitutes justification for the committee to instruct the department of revenue and finance to withhold payments for the area education agency until the committee's inquiries are satisfied completely.

89 Acts, ch 135, §32 HF 535  
NEW section

### **257.33 Prior enrichment approval.**

If the electors of a school district approved the use of the additional enrichment amount prior to July 1, 1991, under chapter 442, or section 279.43, the approval for use of the enrichment amount shall continue in effect until the expiration of the period for which it was approved and districts may use the additional enrichment amount during that period. However, section 257.28 applies to the use of the additional enrichment amount.

89 Acts, ch 135, §33 HF 535  
NEW section

### **257.34 Cash reserve information.**

If a school district receives less state school foundation aid under section 257.1 than is due under that section for a base year and the school district uses funds from its cash reserve during the base year to make up for the amount of state aid not paid, the board of directors of the school district shall include in its general fund budget document information about the amount of the cash reserve used to replace state school foundation aid not paid.

89 Acts, ch 135, §34 HF 535  
NEW section

### **257.35 Area education agency payments.**

The department of management shall deduct the amounts calculated for special education support services, media services, and educational services\* for each school district from the state aid due to the district pursuant to this chapter and shall pay the amounts to the respective area education agencies on a monthly

basis from September 15 through June 15 during each school year. The department of management shall notify each school district of the amount of state aid deducted for these purposes and the balance of state aid shall 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 department of management, 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.

89 Acts, ch 135, §35 HF 535

\*Provisions in chapter 257 relating to funding of media services and educational services were vetoed by the governor;

89 Acts, ch 135, §37 HF 535

NEW section

### **257.36 Special education support services balances.**

Notwithstanding chapters 273 and 281 and sections of this chapter relating to the moneys available to area education agencies for special education support services, for each school year, the department of education may direct the department of management to deduct amounts from the portions of school district budgets that fund special education support services in an area education agency. The total amount deducted in an area shall be based upon excess special education support services unreserved and undesignated fund balances in that area education agency for a school year as determined by the department of education. The department of management shall determine the amount deducted from each school district in an area education agency on a proportional basis. The department of management shall determine from the amounts deducted from the portions of school district budgets that fund area education agency special education support services the amount that would have been local property taxes and the amount that would have been state aid and for the next following budget year shall increase the district's total state school aid available under this chapter for area education agency special education support services and reduce the district's property tax levy for area education agency special education support services by the amount necessary for the property tax portion of the deductions made under this section during the budget year.

The amount deducted from a school district's budget shall not affect the calculation of the state cost per pupil or its district cost per pupil in that school year or a subsequent year.

89 Acts, ch 135, §36 HF 535

NEW section

### **257.37 Reserved.**

### **257.38 Programs for returning dropouts and dropout prevention.**

Boards of school districts, individually or jointly with boards of other school districts, requesting to use additional allowable growth for programs for returning dropouts and dropout prevention, shall annually submit comprehensive program plans for the programs and budget costs, including requests for additional allowable growth for funding the programs, to the department of education as provided in this chapter. The program plans shall include:

1. Program goals, objectives, and activities to meet the needs of children who may drop out of school.
2. Student identification criteria and procedures.
3. Staff in-service education design.
4. Staff utilization plans.
5. Evaluation criteria and procedures and performance measures.
6. Program budget.
7. Qualifications required of personnel administering the program.

8. A provision for dropout prevention and integration of dropouts into the educational program of the district.

9. A provision for identifying dropouts.

10. A program for returning dropouts.

11. Other factors the department requires.

Program plans shall identify the parts of the plan that will be implemented first upon approval of the application. If a district is requesting to use additional allowable growth to finance the program, it shall not identify more than five percent of its budget enrollment for the budget year as returning dropouts and potential dropouts.

89 Acts, ch 135, §38 HF 535  
NEW section

### 257.39 Definitions.

As used in this chapter:

1. "*Returning dropouts*" are resident pupils who have been enrolled in a public or nonpublic school in any of grades seven through twelve who withdrew from school for a reason other than transfer to another school or school district and who subsequently enrolled in a public school in the district.

2. "*Potential dropouts*" are resident pupils who are enrolled in a public or nonpublic school who demonstrate poor school adjustment as indicated by two or more of the following:

a. High rate of absenteeism, truancy, or frequent tardiness.

b. Limited or no extracurricular participation or lack of identification with school, including but not limited to, expressed feelings of not belonging.

c. Poor grades, including but not limited to, failing in one or more school subjects or grade levels.

d. Low achievement scores in reading or mathematics which reflect achievement at two years or more below grade level.

e. Children in grades kindergarten through three who meet the definition of at-risk children adopted by the department of education.

89 Acts, ch 135, §39 HF 535  
NEW section

### 257.40 Plans for returning dropouts and dropout prevention.

The board of directors of a school district requesting to use additional allowable growth for programs for returning dropouts and dropout prevention shall submit applications for approval for the programs to the department not later than November 1 preceding the budget year during which the program will be offered. The department shall review the program plans and shall prior to January 15 either grant approval for the program or return the request for approval with comments of the department included. An unapproved request for a program may be resubmitted with modifications to the department not later than February 1. Not later than February 15, the department shall notify the department of management and the school budget review committee of the names of the school districts for which programs using additional allowable growth for funding have been approved and the approved budget of each program listed separately for each school district having an approved program.

89 Acts, ch 135, §40 HF 535  
NEW section

### 257.41 Funding for programs for returning dropouts and dropout prevention.

The budget of an approved program for returning dropouts and dropout prevention for a school district, after subtracting funds received from other sources for that purpose, shall be funded annually on a basis of one-fourth or more from the district cost of the school district and up to three-fourths by an increase

in allowable growth as defined in section 257.8. Annually, the department of management shall establish a modified allowable growth for each such district equal to the difference between the approved budget for the program for returning dropouts and dropout prevention for that district and the sum of the amount funded from the district cost of the school district plus funds received from other sources.

89 Acts, ch 135, §41 HF 535  
NEW section

#### **257.42 Gifted and talented children.**

Boards of school districts, individually or jointly with the boards of other school districts, requesting to use additional allowable growth for gifted and talented children programs, may annually submit program plans for gifted and talented children programs and budget costs, including requests for additional allowable growth for funding the programs, to the department of education and to the applicable gifted and talented children advisory council, if an advisory council has been established, as provided in this chapter.

The parent or guardian of a pupil may request that a gifted and talented children program be established for pupils who qualify as gifted and talented children under section 257.44, including demonstrated achievement or potential ability in a single subject area.

The department shall employ a consultant for gifted and talented children programs.

The department of education shall adopt rules under chapter 17A relating to the administration of sections 257.42 through 257.49. The rules shall prescribe the format of program plans submitted under section 257.43 and shall require that programs fulfill specified objectives. The department shall encourage and assist school districts to provide programs for gifted and talented children whether or not additional allowable growth is requested under this chapter.

89 Acts, ch 135, §42 HF 535  
NEW section

#### **257.43 Program plans.**

The program plans submitted by school districts shall include all of the following:

1. Program goals, objectives, and activities to meet the needs of gifted and talented children.
2. Student identification criteria and procedures.
3. Staff in-service education design.
4. Staff utilization plans.
5. Evaluation criteria and procedures and performance measures.
6. Program budget.
7. Qualifications required of personnel administering the program.
8. Other factors the department requires.

89 Acts, ch 135, §43 HF 535  
NEW section

#### **257.44 Gifted and talented children defined.**

"*Gifted and talented children*" are those identified as possessing outstanding abilities who are capable of high performance. Gifted and talented children are children who require appropriate instruction and educational services commensurate with their abilities and needs beyond those provided by the regular school program.

Gifted and talented children include those children with demonstrated achievement or potential ability, or both, in any of the following areas or in combination:

1. General intellectual ability.
2. Creative thinking.

3. Leadership ability.
4. Visual and performing arts ability.
5. Specific ability aptitude.

89 Acts, ch 135, §44 HF 535  
NEW section

#### **257.45 Submission of program plans.**

The board of directors of a school district requesting to use additional allowable growth for gifted and talented children programs shall submit applications for approval for the programs to the department not later than November 1 preceding the fiscal year during which the program will be offered. The board shall also submit a copy of the program plans to the gifted and talented children advisory council, if an advisory council has been established. The department shall review the program plans and shall prior to January 15 either grant approval for the program or return the request for approval with comments of the department included. Any unapproved request for a program may be resubmitted with modifications to the department not later than February 1. Not later than February 15 the department shall notify the department of management and the school budget review committee of the names of the school districts for which gifted and talented children programs using additional allowable growth for funding have been approved and the approved budget of each program listed separately for each school district having an approved program.

89 Acts, ch 135, §45 HF 535  
NEW section

#### **257.46 Funding.**

The budget of an approved gifted and talented children program for a school district, after subtracting funds received from other sources for that purpose, shall be funded annually on a basis of one-fourth or more from the district cost of the school district and up to three-fourths by an increase in allowable growth as defined in section 257.8. The approved budget for a gifted and talented children program shall not exceed an amount equal to one and two-tenths percent of the district cost per pupil of the district multiplied by the budget enrollment of the district. Annually, the department of management shall establish a modified allowable growth for each such district equal to the difference between the approved budget for the gifted and talented children program for that district and the sum of the amount funded from the district cost of the school district plus funds received from other sources.

89 Acts, ch 135, §46 HF 535  
NEW section

#### **257.47 Cooperation by area education agencies.**

The area education agencies in which the school districts having approved gifted and talented children programs are located shall cooperate with the school district in the identification and placement of gifted and talented children and may assist school districts in the establishment of such programs.

89 Acts, ch 135, §47 HF 535  
NEW section

#### **257.48 Advisory council.**

At the written request of one or more boards of school districts, in an area education agency, the area education agency board shall establish one or more gifted and talented children advisory councils and shall appoint members for four-year staggered terms. The terms of office of advisory council members shall commence on July 1 of each year. An advisory council shall consist of seven members including teachers, parents, school administrators, and other persons interested in education in the area. Except as otherwise provided in this section, members shall be eligible electors residing in the merged area. Members shall

serve without compensation but shall be reimbursed for actual and necessary expenses and mileage incurred in the performance of their duties from funds available to the area education agency.

If an area education agency has a weighted enrollment of more than thirty-five thousand, the board may appoint additional advisory councils for each thirty-five thousand weighted enrollment or fraction of thirty-five thousand. If more than one advisory council is appointed by the board, the board shall divide the merged area along school district boundary lines for jurisdiction of the advisory councils, and membership of these advisory councils shall be appointed from the designated portion of the merged area.

89 Acts, ch 135, §48 HF 535  
NEW section

#### **257.49 Duties of advisory council.**

The gifted and talented children advisory council shall:

1. Elect a chairperson and vice chairperson from the membership of the advisory council.
2. Meet as often as deemed necessary by the advisory council.
3. Advise and assist a local board of directors in the establishment of gifted and talented children programs, when requested by the local board.
4. Review program plans and proposed budgets for a gifted and talented children program, in consultation with a gifted and talented children consultant employed by the area education agency, when requested by a local board.
5. When requested by a local board, evaluate the results of a gifted and talented children program and file a written report together with recommendations for improvement or change with the board of directors of the applicable school district, the area education agency and the department of education. The evaluation shall be conducted by three or more members of the advisory council.

89 Acts, ch 135, §49 HF 535  
NEW section

## **CHAPTER 258**

### **VOCATIONAL EDUCATION**

For establishment of regional planning boards, effective July 1, 1992, see 89 Acts, ch 278, §5 SF 449

#### **258.3A Duties of board.**

The board shall:

1. Cooperate with the federal board for vocational education in the administration of the Act of Congress.
2. Adopt rules prescribing standards for teachers of agricultural, industrial, and commercial subjects and home economics in approved schools, departments, and classes.
3. Adopt rules prescribing standards for approval of schools, departments, and classes; area vocational-technical high schools and programs; and area vocational schools and programs; and practitioner preparation schools, departments, and classes, applying for federal and state moneys under this chapter.

89 Acts, ch 265, §30 HF 794  
Subsection 3 amended

#### **258.4 Duties of director.**

The director of the department of education shall:

1. Co-operate with the federal board for vocational education in the administration of the Act of Congress.

2. Provide for making studies and investigations relating to prevocational and vocational training in agricultural, industrial, and commercial subjects, and home economics.
3. Promote and aid in the establishment in local communities and public schools of departments and classes giving instruction in subjects listed in subsection 2.
4. Co-operate with local communities in the maintenance of schools, departments, and classes.
5. Make recommendations to the board of educational examiners relating to the enforcement of rules prescribing standards for teachers of subjects listed in subsection 2 in accredited schools, departments, and classes.
6. Co-operate in the maintenance of practitioner preparation schools, departments, and classes, supported and controlled by the public, for the training of teachers and supervisors of subjects listed in subsection 2.
7. Annually inspect, as a basis of approval, all schools, departments, and classes, area vocational-technical high schools and programs, area vocational schools and programs and all practitioner preparation schools, departments, and classes, applying for federal and state moneys under this chapter.
8. Establish a minimum set of competencies and core curriculum for approval of a vocational program sequence that addresses the following: new and emerging technologies; job-seeking, job-keeping, and other employment skills, including self-employment and entrepreneurial skills, that reflect current industry standards, leadership skills, entrepreneurial, and labor-market needs; and the strengthening of basic academic skills.
9. Establish a regional planning process to be implemented by regional planning boards, which utilizes the services of local school districts, merged area schools, and other resources to assist local school districts in meeting vocational education standards while avoiding unnecessary duplication of services.
10. Enforce rules prescribing standards for approval of vocational education programs in schools, departments, and classes.
11. Notwithstanding the accreditation process contained in section 256.11, permit school districts, which provide a program which does not meet the standards for accreditation for vocational education, to cooperate with the regional planning boards and contract for an approved program under this chapter without losing accreditation. A school district which fails to cooperate with the regional planning boards and contract for an approved program shall, however, be subject to section 256.11.

89 Acts, ch 265, §31 HF 794; 89 Acts, ch 278, §4 SF 449

For amendment to subsection 7, effective July 1, 1992, see 89 Acts, ch 278, §3, 9 SF 449

Subsections 5-7 amended

NEW subsections 8-11

### **258.5 Reimbursement from federal and state moneys.**

If a school corporation maintains an approved vocational school, department, or classes in accordance with the rules adopted by the state board, and rules and standards adopted by the board of educational examiners, and the state plan for vocational education, adopted by the board for vocational education and approved by the United States department of education, the director of the department of education shall reimburse the school corporation at the end of the fiscal year for its expenditures for salaries and authorized travel of vocational teachers from federal and state funds. However, a school corporation shall not receive from federal and state funds a larger amount than one-half the sum which has been expended by the school corporation for that particular type of program. If federal and state funds are not sufficient to make the reimbursement to the extent provided in this section, the director shall prorate the respective amounts available to the corporations entitled to reimbursement.

The director may use federal funds to reimburse approved practitioner preparation schools, departments, or classes for the training of teachers of agriculture, home economics, trades and industrial education, distributive education, and for the training of guidance counselors.

89 Acts, ch 265, §32 HF 794  
Section amended

### 258.6 Definitions.

*“Approved school, department, or class”* means a school, department, or class approved by the board as entitled under this chapter to federal and state moneys for the salaries and authorized travel of teachers of vocational subjects. *“Approved practitioner preparation school, department, or class”* means a school, department, or class approved by the board as entitled under this chapter to federal moneys for the training of teachers of vocational subjects.

89 Acts, ch 265, §33 HF 794  
Section amended

## CHAPTER 258A

### CONTINUING PROFESSIONAL AND OCCUPATIONAL EDUCATION— LICENSEE DISCIPLINARY PROCEDURE

#### 258A.1 Definitions.

1. *“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.

2. *“Disciplinary proceeding”* means any proceeding under the authority of a licensing board pursuant to which licensee discipline may be imposed.

3. *“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.

4. *“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.

5. The term *“licensing”* and its derivations include the terms *“registration”* and *“certification”* and their derivations.

6. *“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 physician assistant examiners, created pursuant to chapter 148C.
- n. The board of nursing, created pursuant to chapter 147.
  - a. The board of examiners for nursing home administrators, created pursuant to chapter 135E.
  - p. The board of optometry examiners, created pursuant to chapter 147.
  - q. The board of pharmacy examiners, created pursuant to chapter 147.
  - r. The board of physical and occupational therapy examiners, created pursuant to chapter 147.
  - s. The board of podiatry examiners, created pursuant to chapter 147.
  - t. The board of psychology examiners, created pursuant to chapter 147.
  - u. 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.
  - w. The board of veterinary medicine, created pursuant to chapter 169.
  - x. The director of the department of natural resources in certifying water treatment operators as provided in sections 455B.211 through 455B.224.
  - y. Any professional or occupational licensing board created after January 1, 1978.
  - z. 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.
- 7. "*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.
- 8. "*Peer review*" means evaluation of professional services rendered by a professional practitioner.
- 9. "*Peer review committee*" means one or more persons acting in a peer review capacity pursuant to this chapter.

89 Acts, ch 83, §36 SF 112  
 Subsection 1, paragraph m amended

### 258A.2 Continuing education required.

- 1. Each licensing board shall require and issue rules for continuing education requirements as a condition to license renewal.
- 2. The rules shall create continuing education requirements at a minimum level prescribed by each licensing board. These boards may also establish continuing education programs to assist a licensee in meeting such continuing education requirements. Such rules shall also:
  - a. Give due attention to the effect of continuing education requirements on interstate and international practice.
  - b. Place the responsibility for arrangement of financing of continuing education on the licensee, while allowing the board to receive any other available funds or resources that aid in supporting a continuing education program.
  - c. Attempt to express continuing education requirements in terms of uniform and widely recognized measurement units.
  - d. Establish guidelines, including guidelines in regard to the monitoring of licensee participation, for the approval of continuing education programs that qualify under the continuing education requirements prescribed.
  - e. Not be implemented for the purpose of limiting the size of the profession or occupation.
  - f. Define the status of active and inactive licensure and establish appropriate guidelines for inactive licensee re-entry.

g. Be promulgated solely for the purpose of assuring a continued maintenance of skills and knowledge by a professional or occupational licensee directly related and commensurate with the current level of competency of the licensee's profession or occupation.

3. A person licensed to practice an occupation or profession in this state shall be deemed to have complied with the continuing education requirements of this state during periods that the person serves honorably on active duty in the military services, or for periods that the person is a resident of another state or district having a continuing education requirement for the occupation or profession and meets all requirements of that state or district for practice therein, or for periods that the person is a government employee working in the person's licensed specialty and assigned to duty outside of the United States, or for other periods of active practice and absence from the state approved by the appropriate board of examiners.

4. A person licensed to sell real estate in this state shall be deemed to have complied with the continuing education requirements of this state during periods that the person serves honorably on active duty in the military services, or for periods that the person is a resident of another state or district having a continuing education requirement for the occupation or profession and meets all requirements of that state or district for practice therein, if the state or district accords the same privilege to Iowa residents, or for periods that the person is a government employee working in the person's licensed specialty and assigned to duty outside of the United States, or for other periods of active practice and absence from the state approved by the appropriate board of examiners.

89 Acts, ch 292, §5 HF 764  
NEW subsection 4

## CHAPTER 259

### VOCATIONAL REHABILITATION

#### 259.1 Acceptance of federal Acts.

The state of Iowa, through its legislative authority, accepts the provisions and benefits of the Acts of Congress entitled "*The Rehabilitation Act of 1973*", Pub. L. No. 93-112, "*The Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978*", Pub. L. No. 95-602, the "*Rehabilitation Amendments of 1984*", Pub. L. No. 98-221, and the "*Rehabilitation Amendments of 1986*", Pub. L. No. 99-506, as codified in 29 U.S.C. §701 et seq.

89 Acts, ch 1, §1 SF 125  
Section amended

## CHAPTER 260

### BOARD OF EDUCATIONAL EXAMINERS

Administrative rules in effect on April 15, 1989, remain in effect until modified or repealed by restructured board of educational examiners after July 1, 1989;

89 Acts, ch 265, §10 HF 794

Transition provisions relating to funds, property, and staff; 89 Acts, ch 265, §44 HF 794

#### 260.1 Definitions.

1. "Administrator" means a person who is licensed to coordinate, supervise, or direct an educational program or the activities of other practitioners.
2. "Board" means the board of educational examiners.
3. "Department" means the state department of education.

4. *"License"* means the authority that is given to allow a person to legally serve as a practitioner, a school, an institution, or a course of study to legally offer professional development programs, other than those programs offered by practitioner preparation schools, institutions, or courses of study.

5. *"Practitioner"* means an administrator, teacher, or other licensed professional who does not hold or receive a license from a professional licensing board other than the board of educational examiners and who provides educational assistance to students.

6. *"Practitioner preparation program"* means a program approved by the state board of education which prepares a person to obtain a license as a practitioner.

7. *"Principal"* means a licensed member of a school's instructional staff who serves as an instructional leader, coordinates the process and substance of educational and instructional programs, coordinates the budget of the school, provides formative evaluation for all practitioners and other persons in the school, recommends or has effective authority to appoint, assign, promote, or transfer personnel in a school building, implements the local school board's policy in a manner consistent with professional practice and ethics, and assists in the development and supervision of a school's student activities program.

8. *"Professional development program"* means a course or program which is offered by a person or agency for the purpose of providing continuing education for the renewal or upgrading of a practitioner's license.

9. *"School"* means a school under section 280.2, a merged area school, an area education agency, and a school operated by a state agency for special purposes.

10. *"School service personnel"* means those persons holding a practitioner's license who provide support services for a student enrolled in school or to practitioners employed in a school.

11. *"Student"* means a person who is enrolled in a course of study at a school or practitioner preparation program, or who is receiving direct or indirect assistance from a practitioner.

12. *"Superintendent"* means an administrator who promotes, demotes, transfers, assigns, or evaluates practitioners or other personnel, and carries out the policies of a governing board in a manner consistent with professional practice and ethics.

13. *"Teacher"* means a licensed member of a school's instructional staff who diagnoses, prescribes, evaluates, and directs student learning in a manner which is consistent with professional practice and school objectives, shares responsibility for the development of an instructional program and any coordinating activities, evaluates or assesses student progress before and after instruction, and who uses the student evaluation or assessment information to promote additional student learning.

89 Acts, ch 265, §1 HF 794  
Section stricken and rewritten

## **260.2 Board of examiners created.**

The board of educational examiners is created to exercise the exclusive authority to:

1. License practitioners, who do not hold or receive a license from another professional licensing board, and professional development programs, except for programs developed and offered by practitioner preparation institutions or area education agencies and approved by the state board of education. Licensing authority includes the authority to establish criteria for the licenses, including but not limited to, issuance and renewal requirements, creation of application and renewal forms, creation of licenses that authorize different instructional functions or specialties, development of a code of professional rights and responsibilities, practice, and ethics, and the authority to develop any other classifications, distinctions, and procedures which may be necessary to exercise licensing duties.

A code of professional rights and responsibilities, practice, and ethics shall address but not be limited to the habitual failure of a practitioner to fulfill contractual obligations under section 279.13.

2. Establish, collect, and refund fees for a license.
3. Enter into reciprocity agreements with other equivalent state boards or a national certification board to provide for licensing of applicants from other states or nations.
4. Enforce rules adopted by the board through revocation or suspension of a license, or by other disciplinary action against a practitioner or professional development program licensed by the board of educational examiners.
5. Apply for and receive federal or other funds on behalf of the state for purposes related to its duties.
6. Evaluate and conduct studies of board standards.
7. Hire an executive director, legal counsel, and other personnel and control the personnel administration of persons employed by the board.
8. Hear appeals regarding application, renewal, suspension, or revocation of a license. Board action is final agency action for purposes of chapter 17A.
9. Establish standards for the determination of whether an applicant is qualified to perform the duties required for a given license.
10. Issue statements of professional recognition to school service personnel who are licensed by another professional licensing board.
11. Make recommendations to the state board of education concerning standards for the approval of professional development programs.
12. Establish, under chapter 17A, rules necessary to carry out board duties, and establish a budget request.
13. By January 1, 1991, adopt rules and establish classifications for temporary substitute teaching, for persons who hold a bachelor's degree from an accredited college or university, but who do not meet other requirements for licensure. Rules adopted shall provide that temporary substitute teaching licenses shall be valid for two years, or until the holder has completed an alternative training program, whichever occurs first. Temporary substitute teaching license holders, whose licenses expire because of completion of an alternative training program, shall be eligible for an appropriate standard license upon application and submission of proof of satisfactory completion of the alternative training program.

89 Acts, ch 265, §2 HF 794

Rules in effect on April 15, 1989, remain in effect until modified or repealed by restructured board of educational examiners after July 1, 1989; 89 Acts, ch 265, §10 HF 794

Transition provisions relating to funds, property, and staff; 89 Acts, ch 265, §44 HF 794  
Section stricken and rewritten

### 260.3 Membership.

The board of educational examiners consists of eleven members. Two must be members of the general public and the remaining nine must be licensed practitioners. One of the public members shall also be the director of the department of education, or the director's designee. The other public member shall be a person who does not hold a practitioner's license, but has a demonstrated interest in education. The nine practitioners shall be selected from the following areas and specialties of the teaching profession:

1. Elementary teachers.
2. Secondary teachers.
3. Special education or other similar teachers.
4. Counselors or other special purpose practitioners.
5. Merged area school faculty members.
6. Administrators.
7. School service personnel.

A majority of the licensed practitioner members shall be nonadministrative practitioners. Four of the members shall be administrators. Membership of the

board shall comply with the requirements of sections 69.16 and 69.16A. A quorum of the board shall consist of six members. The director of the department of education shall serve as the chairperson of the board. Members, except for the director of the department of education, shall be appointed by the governor and the appointments are subject to confirmation by the senate.

89 Acts, ch 265, §3 HF 794  
Section stricken and rewritten

#### **260.4 Terms of office.**

Members, except for the director of the department of education, shall be appointed to serve staggered terms of four years. A member shall not serve more than two consecutive terms, except for the director of the department of education, who shall serve until the director's term of office expires. A member of the board, except for the two public members, shall hold a valid practitioner's license during the member's term of office. A vacancy exists when any of the following occur:

1. A nonpublic member's license expires, is suspended, or is revoked.
2. A nonpublic member retires or terminates employment as a practitioner.
3. A member dies, resigns, is removed from office, or is otherwise physically unable to perform the duties of office.
4. A member's term of office expires.

Terms of office for regular appointments begin on July 1, and for vacancies on the date of appointment. Members may be removed for cause by a state court with competent jurisdiction after notice and opportunity for hearing. The board may remove a member for three consecutive absences or for cause.

89 Acts, ch 265, §4 HF 794  
NEW section

#### **260.5 Compensation.**

Members shall be reimbursed for actual and necessary expenses incurred while engaged in their official duties and may be entitled to per diem compensation as authorized under section 7E.6. For duties performed during an ordinary school day by a member who is employed by a school corporation or state university, the member shall also receive regular compensation from the school or university. However, the member shall reimburse the school or university in the amount of the per diem compensation received.

89 Acts, ch 265, §5 HF 794  
Section stricken and rewritten

#### **260.6 Qualifications for practitioners.**

The board shall determine whether an applicant is qualified to perform the duties for which a license is sought. Applicants shall be disqualified for any of the following reasons:

1. The applicant is less than twenty-one years of age. However, a student enrolled in a practitioner preparation program who meets board requirements for a temporary, limited-purpose license who is seeking to teach as part of a practicum or internship may be less than twenty-one years of age.
2. The applicant has been convicted of child abuse or sexual abuse of a child.
3. The applicant has been convicted of a felony.
4. The applicant's application is fraudulent.
5. The applicant's license or certification from another state is suspended or revoked.
6. The applicant fails to meet board standards for application for an initial or renewed license.

Qualifications or criteria for the granting or revocation of a license or the determination of an individual's professional standing shall not include membership or nonmembership in any teachers' organization.

89 Acts, ch 265, §6 HF 794  
Section stricken and rewritten

### 260.7 Validity of license.

A license issued under board authority is valid for the period of time for which it is issued, unless the license is suspended or revoked. A license issued by the board is valid until June 30 of the year in which the license expires. No permanent licenses shall be issued. A person employed as a practitioner shall hold a valid license for the type of service for which the person is employed. This section does not limit the duties or powers of a school board to select or discharge practitioners or to terminate practitioners' contracts. A professional development program, except for a program offered by a practitioner preparation institution or area education agency and approved by the state board of education, must possess a valid license for the types of programs offered.

The executive director of the board may grant or deny license applications, applications for renewal of a license, and suspension or revocation of a license. A denial of an application for a license, the denial of an application for renewal, or a suspension or revocation of a license may be appealed by the practitioner to the board.

The board may issue emergency renewal or temporary, limited-purpose licenses upon petition by a current or former practitioner. An emergency renewal or a temporary, limited-purpose license may be issued for a period not to exceed two years, if a petitioner demonstrates, to the satisfaction of the board, good cause for failure to comply with board requirements for a regular license and provides evidence that the petitioner will comply with board requirements within the period of the emergency or temporary license. Under exceptional circumstances, an emergency license may be renewed by the board for one additional year. A previously unlicensed person is not eligible for an emergency or temporary license, except that a student who is enrolled in a licensed practitioner preparation program may be issued a temporary, limited-purpose license, without payment of a fee, as part of a practicum or internship program.

89 Acts, ch 265, §7 HF 794  
Section stricken and rewritten

### 260.8 License to applicants from other states or countries.

The board may issue a license to an applicant from another state or country if the applicant files evidence of the possession of the required or equivalent requirements with the board. The executive director of the board may, subject to board approval, enter into reciprocity agreements with another state or country for the licensing of practitioners on an equitable basis of mutual exchange, when the action is in conformity with law.

Practitioner preparation and professional development programs offered in this state by out-of-state institutions must be approved by the board in order to fulfill requirements for licensure or renewal of a license by an applicant.

89 Acts, ch 265, §8 HF 794  
Section stricken and rewritten

### 260.9 Continuity of certificates and licenses.

A certificate which was issued by the board of educational examiners to a practitioner before July 1, 1989, continues to be in force as long as the certificate complies with the rules and statutes in effect on July 1, 1989. Requirements for the renewal of licenses, under this chapter, do not apply retroactively to renewal of certificates. However, this section does not limit the duties or powers of a school board to select or discharge practitioners or to terminate practitioners' contracts.

A practitioner who holds a certificate issued before July 1, 1989, shall, upon application and payment of a fee, be granted a license which will permit the practitioner to perform the same duties and functions as the practitioner was entitled to perform with the certificate held at the time of application. A

practitioner shall be permitted to convert a permanent certificate to a term certificate, after July 1, 1989, without payment of a fee.

A professional development program provided by a school district and approved by the state board of education before July 1, 1989, shall be permitted to continue until the term, for which the program was approved, expires.

89 Acts, ch 265, §9 HF 794  
Section stricken and rewritten

### **260.10 Fees.**

It is the intent of the general assembly that licensing fees established by the board of educational examiners be sufficient to finance the activities of the board under this chapter.

Licensing fees are payable to the treasurer of state and shall be deposited with the executive director of the board. The executive director shall deposit the fees with the treasurer of state and the fees shall be credited to the general fund of the state. The executive director shall keep an accurate and detailed account of fees received and paid to the treasurer of state.

89 Acts, ch 265, §11 HF 794  
Section stricken and rewritten

### **260.11 Expenditures and refunds.**

Expenditures and refunds made by the board under this chapter shall be certified by the executive director of the board to the director of revenue and finance, and if found correct, the director of revenue and finance shall approve the expenditures and refunds and draw warrants upon the treasurer of state from the funds appropriated for that purpose.

89 Acts, ch 265, §12 HF 794  
Section stricken and rewritten

**260.12 Permanent professional certificate.** Repealed by 89 Acts, ch 265, §43. See §260.7. HF 794

### **260.13 Hearing procedures.**

Hearings before the board shall be conducted in the same manner as contested cases under chapter 17A. The board may subpoena books, papers, records, and any other real evidence necessary for the board to decide whether it should institute a contested case hearing. At the hearing the board may administer oaths and issue subpoenas to compel the attendance of witnesses and the production of other evidence. Subpoenas may be issued by the board to a party to a hearing, if the party demonstrates that the evidence or witnesses' testimony is relevant and material to the hearing. Service of process and subpoenas for board hearings shall be conducted in accordance with the law applicable to the service of process and subpoenas in civil actions.

Witnesses subpoenaed to appear before the board shall be reimbursed for mileage and necessary expenses and shall receive per diem compensation by the board, unless the witness is an employee of the state or a political subdivision, in which case the witness shall receive reimbursement only for mileage and necessary expenses.

89 Acts, ch 265, §13 HF 794  
See Code editor's note  
NEW section

**260.14 Fees.** Repealed by 89 Acts, ch 265, §43. See §260.10. HF 794

**260.15 Applications—disbursement of fees.** Repealed by 89 Acts, ch 265, §43. See §260.10. HF 794

**260.19 Substitute teacher's certificate.** Repealed by 89 Acts, ch 265, §43. HF 794

**260.20 National certification.** Repealed by 89 Acts, ch 265, §43. See §260.2. HF 794

**260.21 Validity of certificates.** Repealed by 89 Acts, ch 265, §43. See §260.7. HF 794

**260.23 Revocation by board.** Repealed by 89 Acts, ch 265, §43. See §260.2, 260.13. HF 794

**260.25 Rules for practitioner preparation programs.**

Not later than January 1, 1991, the state board of education shall adopt rules pursuant to chapter 17A to implement the following for approved practitioner preparation programs:

1. A requirement that each student admitted to an approved practitioner preparation program must participate in field experiences that include both observation and participation in teaching activities in a variety of school settings. These field experiences shall comprise a total of at least fifty hours' duration, at least forty hours of which shall occur after a student's admission to an approved practitioner preparation program. The student teaching experience shall be a minimum of twelve weeks in duration during the student's final year of the practitioner preparation program.

2. A requirement that faculty members in professional education maintain an ongoing involvement in activities in elementary, middle, or secondary schools. The activities shall include at least forty hours of team teaching during a period not exceeding five years in duration at the elementary, middle, or secondary level.

3. A requirement that the program include instruction in skills and strategies to be used in classroom management of individuals, and of small and large groups, under varying conditions; skills for communicating and working constructively with pupils, teachers, administrators, and parents; and skills for understanding the role of the board of education and the functions of other education agencies in the state. The requirement shall be based upon recommendations of the department of education after consultation with teacher education faculty members in colleges and universities.

4. A requirement that prescribes minimum experiences and responsibilities to be accomplished during the student teaching experience by the student teacher and by the cooperating teacher based upon recommendations of the department of education after consultation with teacher education faculty members in colleges and universities. The student teaching experience shall consist of interactive experiences involving the college or university personnel, the student teacher, the cooperating teacher, and administrative personnel from the cooperating teacher's school district.

5. A requirement that each approved practitioner preparation or professional development institution annually offer a workshop of at least one day in duration for prospective cooperating teachers. The workshop shall define the objectives of the student teaching experience, review the responsibilities of the cooperating teacher, and provide the cooperating teacher other information and assistance the institution deems necessary.

6. A requirement that practitioner preparation students receive instruction in the use of electronic technology for classroom and instructional purposes.

7. A requirement that approved practitioner preparation institutions annually solicit the views of the education community regarding the institution's practitioner preparation programs.

8. A requirement that an approved practitioner preparation institution submit evidence that the college or department of education is communicating with other colleges or departments in the institution so that practitioner preparation

students may integrate teaching methodology with subject matter areas of specialization.

9. A requirement that an approved practitioner preparation program submit evidence that the evaluation of the performance of a student teacher is a cooperative process that involves both the faculty member supervising the student teacher and the cooperating teacher. The rules shall require that each institution develop a written evaluation procedure for use by the cooperating teacher and a form for evaluating student teachers, and require that a copy of the completed form be included in the student teacher's permanent record.

89 Acts, ch 265, §14 HF 794

Unnumbered paragraph 1, and subsections 1 and 5 through 9, amended

**260.27 Student teaching.** Repealed by 89 Acts, ch 265, §43. HF 794

**260.28 Expenditures.** Repealed by 89 Acts, ch 265, §43. See §260.11. HF 794

**260.31 Coaching authorization.**

1. The minimum requirements for the board to award a coaching license to an applicant are:

a. Successful completion of one semester credit hour or ten contact hours in a course relating to knowledge and understanding of the structure and function of the human body in relation to physical activity.

b. Successful completion of one semester credit hour or ten contact hours in a course relating to knowledge and understanding of human growth and development of children and youth in relation to physical activity.

c. Successful completion of two semester credit hours or twenty contact hours in a course relating to knowledge and understanding of the prevention and care of athletic injuries and medical and safety problems relating to physical activity.

d. Successful completion of one semester credit hour or ten contact hours relating to knowledge and understanding of the techniques and theory of coaching interscholastic athletics.

2. The board of educational examiners shall adopt rules under chapter 17A for coaching licenses including, but not limited to, approval of courses, validity and expiration, fees, and suspension and revocation of licenses. The state board of education shall work with institutions of higher education, private colleges and universities, merged area schools, and area education agencies to ensure that the courses required under subsection 1 are offered throughout the state at convenient times and at a reasonable cost.

89 Acts, ch 265, §15, 16 HF 794

Subsection 1, unnumbered paragraph 1 amended

Subsection 2 amended

**260.33 Evaluator license.**

Effective July 1, 1990, in addition to licenses required under rules adopted pursuant to this chapter, an individual employed as an administrator, supervisor, school service person, or teacher by a school district, area education agency, or area school, who conducts evaluations of the performance of individuals holding licenses under this chapter, shall possess an evaluator license.

By July 1, 1990, the board of educational examiners shall adopt rules establishing requirements for an evaluator license including but not limited to renewal requirements, fees, and suspension and revocation of evaluator licenses. An approved program shall include provisions for determining that an applicant for an evaluator license has satisfactorily completed the program. The state board of education shall work with institutions of higher education under the state board of regents, private colleges and universities, merged area schools, and area

education agencies to ensure that the courses required under subsection 1 are offered throughout the state at convenient times and at reasonable cost. The requirements shall include completion of a program approved by the state board of education as follows:

1. For evaluation of teachers, the development of skills including but not limited to analysis of lesson plans, classroom observation, analysis of data, performance improvement strategies, and communication skills.

2. For evaluation of licensed employees other than teachers, the development of skills including but not limited to communication skills, analysis of employee performance, analysis of data, and performance improvement strategies.

A license is valid for a period of five years from its issuance.

89 Acts, ch 265, §17 HF 794  
Section amended

### **260.34 Elementary licenses.**

The board of educational examiners in conjunction with the child development coordinating council, or other similar agency, shall develop appropriate licenses for teachers in the early elementary grades, taking into consideration recommendations from the child development coordinating council or other similar agency, the center for early development education, and teacher education personnel.

89 Acts, ch 265, §18 HF 794  
Section amended

## **CHAPTER 260A**

### **EDUCATIONAL EXCELLENCE PROGRAM—PROJECTS**

Chapter 260A repealed effective July 1, 1991; 89 Acts, ch 135, §134 HF 535

## **CHAPTER 261**

### **COLLEGE AID COMMISSION**

#### **261.1 Commission created.**

There is hereby created a commission to be known as the "College Aid Commission" of the state of Iowa. Membership of the commission shall be as follows:

1. A member of the state board of regents to be named by the board, or the secretary thereof if so appointed by the board, who shall serve for a four-year term or until the expiration of the member's term of office. Such member shall convene the organizational meeting of the commission.

2. The director of the department of education.

3. A member of the state council on vocational education to be named by the committee, who shall serve for a four-year term or until the expiration of the member's term of office.

4. A member of the senate to be appointed by the majority leader of the senate to serve as an ex officio nonvoting member for a term of four years beginning on July 1 of the year of appointment.

5. A member of the house of representatives to be appointed by the speaker of the house to serve as an ex officio nonvoting member for a term of four years beginning on July 1 of the year of appointment.

6. Seven additional members to be appointed by the governor. One of such members shall be selected to represent private colleges, private universities and private junior colleges located in the state of Iowa. When appointing such one

member, the governor shall give careful consideration to any person or persons nominated or recommended by any organization or association of some or all private colleges, private universities and private junior colleges located in the state of Iowa. One such member shall be enrolled as a student at a board of regents institution, merged area school, or accredited private institution. One such member shall be a representative of a lending institution located in this state. One such member shall be a representative of the Iowa student loan liquidity corporation. The other three such members, none of whom shall be official board members or trustees of an institution of higher learning or of an association of such institutions, shall be selected to represent the general public.

The members of the commission appointed by the governor shall serve for a term of four years.

Vacancies on the commission shall be filled for the unexpired term of such vacancies in the same manner as the original appointment.

A vacancy shall exist on the commission when a legislative member of the commission ceases to be a member of the general assembly or when a student member ceases to be enrolled as a student. Such vacancy shall be filled within thirty days.

89 Acts, ch 83, §37 SF 112; 89 Acts, ch 300, §1 HF 644  
Subsections 3 and 6 amended

### **261.2 Duties of commission—federal co-operation.**

The commission shall:

1. Prepare and administer a state plan for higher education facilities which shall be the state plan submitted to the secretary of education, in connection with the participation of this state in programs authorized by the federal "Higher Education Facilities Act of 1963" (P.L. 88-204), [77 Stat. L. 363; 20 U.S.C. 701] together with any amendments thereto.

2. Provide for administrative hearings to every applicant for funds authorized under the "Higher Education Facilities Act of 1963" (P. L. 88-204), [77 Stat. L. 363; 20 U.S.C. 701] together with any amendments thereto, in regard to the priority assigned to such application for funds by said commission or to any other determination of the state commission adversely affecting the applicant.

3. Apply for, receive, administer, expend, and account for such federal moneys necessary for its own administrative expenses as authorized by the federal "Higher Education Facilities Act of 1963" (P. L. 88-204), [77 Stat. L. 363; 20 U.S.C. 701] together with any amendments thereto.

4. Prepare and administer a state plan for a state supported and administered scholarship program. The state plan shall provide for scholarships to deserving students of Iowa, matriculating in Iowa universities, colleges, area vocational schools, area community colleges, or schools of professional nursing. Eligibility of a student for receipt of a scholarship during the student's first year of eligibility shall be based upon academic achievement and completion of advanced level courses prescribed by the commission. Continuation of the scholarship in subsequent years shall be based upon the student's financial need and the maintenance by the student of a cumulative grade point average of at least a three point zero on a four point zero grading scale or its equivalent.

5. Receive, administer, and allot a tuition loan fund for the benefit of Iowa resident students enrolled in Iowa studying to be physicians or osteopathic physicians and surgeons and who agree to become general practitioners (family doctors) and practice in Iowa.

Said fund shall be allotted to students for not more than three years of study and shall be in the nature of a loan. Such loan shall have as one of its terms that fifty percent thereof shall be canceled at the end of five years of the general practice in Iowa with an additional ten percent to be canceled each year thereafter until the entire loan may be canceled. No interest shall be charged on any part of the loan

thus canceled. Additional terms and conditions of said loan shall be established by the college aid commission so as to facilitate the purpose of this section.

Chapter 8 shall apply to this subsection except that section 8.5 shall not apply.

6. Administer the tuition grant program under this chapter.

7. Prepare a state plan, complete with fiscal implications, for a state matching program to match federal funds paid under the GI Bill Improvement Act of 1977 Public Law 95-202 to a veteran who is an Iowa resident for the purpose of repaying any school loans received by such veteran from the United States veterans administration.

8. Prepare and administer the Iowa science and mathematics loan program under this chapter.

9. Administer the supplemental grant program under this chapter.

10. Prepare and administer the occupational therapist loan program under this chapter.

11. Review reports filed by accredited private institutions under section 261.9, subsection 5, to determine compliance.

12. Develop and implement, in cooperation with the state board of regents, an educational program and marketing strategies designed to inform parents about the options available for financing a college education and the need to accumulate the financial resources necessary to pay for a college education. The educational program shall include, but not be limited to, distribution of informational material to public and nonpublic elementary schools for distribution to parents and guardians of five-year and six-year old children.

13. Approve transfers from the scholarship and tuition grant reserve fund under section 261.20.

89 Acts, ch 300, §2 HF 644  
NEW subsection 13

### 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 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 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.

d. 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.

e. Which promotes equal opportunity and affirmative action efforts in the recruitment, appointment, assignment, and advancement of personnel at the institution. In carrying out this responsibility the institution shall do all of the following:

- (1) Designate a position as the affirmative action coordinator.
- (2) Adopt affirmative action standards.
- (3) Gather data necessary to maintain an ongoing assessment of affirmative action efforts.
- (4) Monitor accomplishments with respect to affirmative action remedies identified in affirmative action plans.
- (5) Conduct studies of preemployment and postemployment processes in order to evaluate employment practices and develop improved methods of dealing with all employment issues related to equal employment opportunity and affirmative action.
- (6) Establish an equal employment committee to assist in addressing affirmative action needs, including recruitment.
- (7) Address equal opportunity and affirmative action training needs by:
  - (a) Providing appropriate training for managers and supervisors.
  - (b) Insuring that training is available for all staff members whose duties relate to personnel administration.
  - (c) Investigating means for training in the area of career development.
- (8) Require development of equal employment opportunity reports, including the initiation of the processes necessary for the completion of the annual EEO-6 reports required by the federal equal employment opportunity commission.
- (9) Address equal opportunity and affirmative action policies with respect to employee benefits and leaves of absence.
- (10) File annual reports with the college aid commission of activities under this paragraph.

6. "Commission" means the college aid commission.

7. "Part-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 three semester hours or the trimester or quarter equivalent of three semester hours. "Course of study" does not include correspondence courses.

89 Acts, ch 319, §42 HF 774

Subsection 5, former paragraph c stricken and paragraphs d-f relettered as c-e

**261.12 Amount of grant.**

1. The amount of a tuition grant to a qualified full-time student for the fall and spring semesters, or the trimester equivalent, shall be the amount of the student's financial need for that period. However, a tuition grant shall not exceed the lesser of:

a. The total tuition and mandatory fees for that student for two semesters or the trimester or quarter equivalent, less the base amount determined annually by

the college aid commission, which base amount shall be within ten dollars of the average tuition for two semesters or the trimester equivalent of undergraduate study at the state universities under the board of regents, but in any event the base amount shall not be less than four hundred dollars; or

b. For the fiscal year beginning July 1, 1989, and for each following fiscal year, two thousand five hundred dollars.

2. The amount of a tuition grant to a qualified part-time student enrolled in a course of study including at least three semester hours but fewer than twelve semester hours for the fall and spring semesters, or the trimester or quarter equivalent, shall be equal to the amount of a tuition grant that would be paid to a full-time student times a number which represents twelve semester hours, or the trimester or quarter equivalent, divided by the number of hours in which the part-time student is actually enrolled.

89 Acts, ch 300, §3 HF 644; 89 Acts ch 319, §43 HF 774

Subsection 1, paragraph b stricken and rewritten

Subsection 2 stricken and rewritten

### **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 five hundred 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.

89 Acts, ch 319, §44 HF 774  
 Subsection 3 amended

**261.18 Osteopathic grant program.**

1. There is established an osteopathic grant program for resident students who are enrolled in the university of osteopathic medicine and health sciences of Des Moines, Iowa. The osteopathic grant program shall be administered by the commission in the manner provided in this section. 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.

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 the rules shall be subject to chapter 17A.

3. Of the funds appropriated for the osteopathic grant program, the commission shall provide a three thousand dollar grant to each Iowa resident student enrolled in the university of osteopathic medicine and health sciences. If insufficient funds are available to pay the entire amount of the grant to each eligible student, the amount of the grant shall be prorated.

89 Acts, ch 319, §45 HF 774  
 Section amended

**261.19 Payment of subvention.**

A subvention program for the university of osteopathic medicine and health sciences is established. The subvention program shall provide funds to the university for Iowa resident students. The total amount of moneys appropriated to the college aid commission for the subvention program shall be paid to the university if the university certifies to the college aid commission not later than September 15 and January 15 of each fiscal year that at least twenty percent of the total students enrolled are Iowa residents. The certification shall contain the number, names, and addresses of all students enrolled, by class, and shall indicate which students are resident students.

The college aid commission shall determine a subvention amount per resident student by dividing the funds appropriated for this section by a number equal to the total of twenty percent of the total students enrolled. If fewer than twenty percent of the total number of students enrolled are Iowa residents, the college aid commission shall deduct from the funds appropriated an amount equal to the subvention amount per resident student multiplied by the number of students required to equal twenty percent of the total students enrolled.

The commission shall compute the amount of moneys to be paid to the university and transmit the funds to the university of osteopathic medicine and health sciences within ten days following receipt of the certification.

89 Acts, ch 319, §46 HF 774  
 Section stricken and rewritten

**261.20 Scholarship and tuition grant reserve fund.**

1. A scholarship and tuition grant reserve fund is created to assure that financial assistance will be available to all students who are awarded scholarships or tuition grants through programs funded under this chapter. The fund is created as a separate fund in the state treasury, and moneys in the fund shall not revert to the general fund unless, and then only to the extent that, the funds exceed the maximum allowed balance.

2. The maximum balance of the scholarship and tuition grant reserve fund is an amount equal to one percent of the funds appropriated to the scholarship and tuition grant programs under section 261.25 during the preceding fiscal year. The

moneys in the fund shall be placed in separate accounts within the fund, according to the source and purpose of the original appropriation. Moneys in the various accounts shall only be used to alleviate a current fiscal year shortfall in appropriations for scholarship or tuition grant programs that have the same nature as the programs for which the moneys were originally appropriated. At the conclusion of a fiscal year, any surplus appropriations made to the commission for scholarship or tuition grant programs are appropriated to the scholarship and grant reserve fund in an amount equal to the amount of the surplus or the amount necessary to achieve the maximum balance, whichever amount is less.

3. Transfers of moneys from the scholarship and tuition grant reserve fund to appropriation accounts in which there is a current fiscal year shortfall may be made only with the prior written approval of the governor. At least two weeks before moneys are transferred from the fund, the commission shall notify the chairpersons of the standing appropriations committees of the general assembly and the co-chairpersons of the education appropriations subcommittee of the proposed transfer. The notice shall include information concerning the amount of and reason for the proposed transfer. The chairpersons shall be given at least two weeks to review and comment on the proposed transfer before the transfer can be made.

4. The commission shall annually report to the general assembly the methodology and manner in which the commission makes the determination of awards for programs for which funds are appropriated under section 261.25.

89 Acts, ch 300, §4 HF 644  
NEW section

**261.21** Reserved.

**261.25 Appropriations—standing limited—minority student and faculty information.**

1. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of thirty million six hundred eighty-two thousand five hundred five 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 eight 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 seven hundred fifty thousand dollars for vocational-technical tuition grants.

4. This section shall not be construed to be a limitation on any of the amounts which may be appropriated by the general assembly for any program enumerated in this section.

5. For the fiscal year beginning July 1, 1989, and in succeeding years, the institutions of higher education that enroll recipients of Iowa tuition grants shall transmit to the Iowa college aid commission information about the numbers of minority students enrolled and minority faculty members employed at the institution, and existing or proposed plans for the recruitment and retention of minority students and faculty as well as existing or proposed plans to serve nontraditional students. The Iowa college aid commission shall compile and report the enrollment and employment information and plans to the chairpersons and ranking members of the house and senate education committees, members of the joint education appropriations subcommittee, the governor, and the legislative fiscal bureau by December 15 of each year.

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.

89 Acts, ch 319, §47, 48 HF 774  
 \*See 66 GA, ch 1196  
 Subsections 1, 2 and 3 amended  
 NEW subsection 5

#### IOWA GUARANTEED LOAN PAYMENT PROGRAM

### 261.35 Definitions.

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

1. "*Commission*" means the college aid commission of the state of Iowa.
2. "*Eligible institution*" means any postsecondary educational institution which meets the requirements of the provisions of the Higher Education Act of 1965 for student participation in the federal interest subsidy program and the requirements prescribed by rule of the commission.
3. "*Eligible lender*" means a financial or credit institution, insurance company or other approved lender which meets the standards prescribed by the commission and has executed a lender participation agreement with the commission.
4. "*Higher Education Act of 1965*" means the federal Higher Education Act of 1965, as amended and codified in 20 U.S.C. §1071 et seq.
5. "*Eligible borrower*" means a person, or the parent of a person, who is a resident of this state and is enrolled or will be enrolled at an eligible institution within or without the state or who is a nonresident of this state and is enrolled or will be enrolled at an eligible institution within the state, or who is a resident of another state and is borrowing from an Iowa-based eligible lender and is enrolled or will be enrolled at an eligible institution within or without the state, or who has previously received a loan guaranteed by the commission. All eligible borrowers must meet the eligibility requirements established by the commission. The commission shall establish the qualifications for being a resident of this state; however, the qualifications shall not be more stringent than those established by the state board of regents.

89 Acts, ch 300, §5 HF 644  
 Subsections 4 and 5 amended

### 261.36 Powers.

The commission shall have necessary powers to carry out its purposes and duties under this division, including but not limited to the power to:

1. Sue and be sued in its own name.
2. Incur and discharge debts including the payment of any defaulted loan obligations which have been guaranteed by the commission.
3. Make and execute agreements, contracts and other instruments with any public or private person or agency including the United States secretary of education.
4. Guarantee loans made by eligible lenders to eligible borrowers who are, or whose children are, enrolled or will be enrolled at eligible institutions as at least half-time students as defined by the commission.
5. Approve educational institutions as eligible institutions upon their meeting the requirements established by the commission.
6. Approve financial or credit institutions, insurance companies or other lenders as eligible lenders upon their meeting the standards established by the commission for making guaranteed loans.
7. Accept appropriations, gifts, grants, loans or other aid from public or private persons or agencies including the United States secretary of education.
8. Implement various means of encouraging maximum lender participation in the Iowa guaranteed loan payment program.

89 Acts, ch 300, §26 HF 644  
 Section amended

**261.37 Duties.**

The duties of the commission under this division shall be as follows:

1. To review the Iowa guaranteed loan and the Iowa guaranteed loan payment programs.
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 adopt 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. Notwithstanding any contrary provisions in chapter 537, 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 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 rates of borrowers, enrollment, and placement statistics by postsecondary institution.
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.

89 Acts, ch 300, §6 HF 644  
Subsections 1, 5 and 7 amended

**261.38 Loan reserve account.**

1. The commission shall establish a loan reserve account from which any default on a guaranteed student loan shall be paid. The commission shall credit to this account all moneys designated exclusively for the reserve fund by the United States, the state of Iowa or any of their agencies, departments or instrumentalities, as well as any funds accruing to the program which are not required for current administrative expenses. The department of management

shall determine the actuarially sound reserve requirement for the amount of guaranteed loans outstanding.

2. The general assembly shall appropriate moneys from the loan reserve account of the commission to the college aid commission for operating costs of the guaranteed loan program. Moneys appropriated from the loan reserve account for operating costs of the guaranteed loan program that are unencumbered or unobligated on June 30 of a fiscal year shall revert to the loan reserve account of the commission.

3. The payment of any funds for the default on a guaranteed student loan shall be solely from the loan reserve account. The general assembly shall not be obligated to appropriate any moneys to pay for any defaults or to appropriate any moneys to be credited to the loan reserve account. The commission shall not give or lend the credit of the state of Iowa.

4. Funds on deposit in the loan reserve account or in the administrative account shall not revert to the state general fund at the close of any fiscal year.

5. The treasurer of state shall invest any funds, including those in the loan reserve account, and the interest income earned shall be credited back to the loan reserve account.

89 Acts, ch 300, §7 HF 644  
Subsection 2 amended

### **261.39 Transfer of funds and assets.**

All moneys which are to be refunded to the state under the contract with United Student Aid Funds, Incorporated, involving the Iowa guaranteed student loan program in effect prior to July 1, 1978, shall be refunded to the commission and shall be credited to the loan reserve account except those funds which must be repaid to the United States government.

All assets and liabilities of the student loan program established pursuant to sections 261.5 to 261.8, Code 1977, and existing on July 1, 1978 shall be assets and liabilities of the Iowa guaranteed loan payment program established pursuant to this chapter.

89 Acts, ch 300, §26 HF 644  
See Code editor's note  
Section amended

### **261.40 Repayment of state appropriations.**

The commission shall repay to the treasurer of state all funds appropriated for the Iowa guaranteed student loan program for the fiscal years 1979, 1980 and 1981. The commission shall repay such funds in any fiscal year only when the funds available are in excess of the amount needed to pay the costs of administering the program and to insure an actuarially sound reserve account for that fiscal year and then only in the amount of the excess funds available.

89 Acts, ch 300, §26 HF 644  
See Code editor's note

### **261.42 Short title.**

This division shall be known and may be cited as the "Iowa Guaranteed Loan Payment Program".

89 Acts, ch 300, §8 HF 644  
Section amended

### **261.43 Actions not barred.**

No lapse of time shall be a bar to any action to recover on any loan guaranteed by the commission.

89 Acts, ch 300, §9 HF 644  
NEW section

## GUARANTEED LOAN PAYMENT PROGRAM

**261.44 Guaranteed loan payment program.**

A guaranteed loan payment program is established to be administered by the commission. The purpose of the program is to assist individuals to enter professions in areas of employment critical to the welfare of the citizens of the state. The commission shall adopt rules pursuant to chapter 17A to provide for the administration of the program. Moneys appropriated for the program shall be used to repay loans to students demonstrating the greatest financial need and shall not be prorated among all qualified applicants. If moneys appropriated are insufficient to repay loans to all qualified applicants, priority shall be given to repayment of debts under the Iowa guaranteed student loan program.

89 Acts, ch 300, §10 HF 644  
NEW section

**261.45 Teacher loan payments.**

An individual is eligible for reimbursement payments under the guaranteed loan payment program if the individual meets all of the following conditions:

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 licensed teacher at the Iowa braille and sight-saving school or the Iowa school for the deaf.
2. As of the beginning of a school year, has an outstanding debt with an eligible lender under the Iowa guaranteed student loan program or the Iowa supplemental loans for students program, has parents with an outstanding debt with an eligible lender under the Iowa PLUS loan program, or has an outstanding debt under the Stafford loan program, the supplemental loans for students program, or the PLUS loan program.
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 maximum annual reimbursement payment to an eligible teacher for loan repayments made during a school year is one thousand dollars or the remainder of the teacher's 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.

The commission may sign contracts with eligible students at or after the time of loan origination to assure loan repayment.

89 Acts, ch 265, §41 HF 794; 89 Acts, ch 300, §11 HF 644  
Section amended

**261.46 Occupational therapist loan payments.**

An occupational therapist is eligible for reimbursement payments under the guaranteed loan payment program if the therapist:

1. Has entered into a payment agreement with the commission on or after July 1, 1988.
2. Is a licensed occupational therapist under chapter 148B.
3. Is an Iowa resident employed in Iowa as an occupational therapist as certified by the board of physical and occupational therapy examiners.
4. For the third and fourth years of an occupational therapist program, has an outstanding debt with an eligible lender under the Iowa guaranteed student loan program or the Iowa supplemental loans for students program, has parents with

an outstanding debt with an eligible lender under the Iowa PLUS loan program, or has an outstanding debt under the Stafford loan program, the supplemental loans for students program, or the PLUS loan program.

The maximum annual reimbursement payment to an eligible occupational therapist for loan payments made during a year for loans qualifying under subsection 4 is four thousand dollars or the remainder of the therapist's loan, whichever is less. Total payments for an eligible occupational therapist are limited to a two-year period and shall not exceed a total of eight thousand dollars.

If an occupational therapist fails to complete a year of employment as provided in subsection 3, the therapist shall not be reimbursed for payments made during that year.

The commission may sign contracts with eligible students at or after the time of loan origination to assure loan repayment.

89 Acts, ch 300, §12 HF 644  
Section amended

### **261.47 Nursing loan payments.**

An individual is eligible for reimbursement payments under the guaranteed loan payment program if the individual meets all of the following conditions:

1. Is a registered nurse or a licensed practical nurse employed on a full-time basis in practice as a registered nurse or licensed practical nurse, for the fiscal year beginning July 1, 1989, and ending June 30, 1990, in a hospital, state agency, agency of a political subdivision, or agency delivering home-based health care, or a health care facility in this state and, in subsequent years, anywhere in this state.

2. As of the beginning of the state fiscal year, has an outstanding debt with an eligible lender under the Iowa guaranteed student loan program or the Iowa supplemental loans for students program, has parents with an outstanding debt with an eligible lender under the Iowa PLUS loan program, or has an outstanding debt under the Stafford loan program, the supplemental loans for students program, or the PLUS loan program.

3. Has never defaulted on a loan guaranteed by the commission or the federal government.

4. Has graduated from an approved registered nurse or licensed practical nurse program on or after April 1, 1989.

The maximum annual reimbursement payment to an eligible registered nurse or licensed practical nurse for loan payments made during a year for loans qualifying under subsection 2 is one thousand dollars or the remainder of the individual's loan, whichever is less.

Total payments under this section are limited to a six-year period and shall not exceed six thousand dollars. If a registered nurse or licensed practical nurse fails to complete a year of employment in practice, the individual shall not be reimbursed for payments made during that year.

The commission may sign contracts with eligible students at or after the time of loan origination to assure loan repayment.

89 Acts, ch 300, §13 HF 644  
NEW section

### **261.48 Minority teacher loan payments.**

An individual is eligible for reimbursement payments under the guaranteed loan payment program if the individual meets all of the following conditions:

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 licensed teacher at the Iowa braille and sight-saving school or the Iowa school for the deaf.

2. Is a member of a minority.

3. Has never defaulted on a loan guaranteed by the commission.

4. Has an outstanding debt with an eligible lender under the Iowa guaranteed student loan program or the Iowa supplemental loans for students program, has parents with an outstanding debt with an eligible lender under the Iowa PLUS loan program, or has an outstanding debt under the Stafford loan program, the supplemental loans for students program, or the PLUS loan program.

5. Graduated from college after January 1, 1989.

The maximum annual reimbursement payment to an eligible teacher under this section for loan repayments made during a school year is one thousand dollars or the remainder of the teacher's loan, whichever is less. Total payments under this section for an eligible teacher are limited to a six-year period and shall not exceed six thousand dollars. If a teacher fails to complete a year of employment on a full-time basis as provided in subsection 1, the teacher shall not be reimbursed for loan payments made during that school year. If the number of eligible applicants exceeds the funding available, the commission may accept applicants based on academic scholarship.

The commission may sign contracts with eligible students at or after the time of loan origination to assure loan repayment.

A teacher receiving a reimbursement payment under this section is not eligible for a reimbursement payment under section 261.45.

89 Acts, ch 300, §14 HF 644  
NEW section

#### **261.49 National guard loan payments.**

A member of the national guard is eligible for reimbursement payments under the guaranteed loan payment program if the individual meets all of the following conditions:

1. Is a member of the national guard who has completed basic military training, or is participating in the reserve officer training corps simultaneous-membership program as an advanced cadet.

2. Has never defaulted on a loan guaranteed by the commission.

3. Is an Iowa resident whose membership in the Iowa national guard is in good standing.

4. Has an outstanding debt with an eligible lender under the Iowa guaranteed student loan program or the Iowa supplemental loans for students program, has parents with an outstanding debt with an eligible lender under the Iowa PLUS loan program, or has an outstanding debt under the Stafford loan program, the supplemental loans for students program, or the PLUS loan program.

The maximum annual reimbursement to an eligible national guard member during a year for loans qualifying under subsection 4 is two thousand dollars or the remainder of the member's loan, whichever is less. Total payments for an eligible national guard member are limited to a five-year period and shall not exceed a total of ten thousand dollars.

If a national guard member becomes separated from the national guard, the member shall not be reimbursed for payments made during the year that the member is separated from the national guard.

The commission may sign contracts with eligible students at or after the time of loan origination to assure loan repayment.

89 Acts, ch 300, §15 HF 644  
NEW section

#### **261.50 Physician loan payments.**

A physician is eligible for reimbursement payments under the guaranteed loan payment program if the physician meets all of the following conditions:

1. Is licensed to practice medicine under chapter 148 or 150A.

2. Has never defaulted on a loan guaranteed by the commission.

3. Agrees to practice in an eligible community of fewer than five thousand population for a minimum period of four consecutive years.

4. Has an outstanding debt with an eligible lender under the Iowa guaranteed student loan program or the Iowa supplemental loans for students program, has parents with an outstanding debt with an eligible lender under the Iowa PLUS loan program, or has an outstanding debt under the Stafford loan program, the supplemental loans for students program, or the PLUS loan program.

The maximum annual reimbursement payment to an eligible physician during a year for loans qualifying under subsection 4 is five thousand dollars or the remainder of the loan, whichever is less. Total payments for an eligible physician are limited to a four-year period and shall not exceed a total of twenty thousand dollars.

If a physician fails to practice in an eligible community for a year or portion of a year during the four-year period, the individual shall not be reimbursed for payments made during that year.

The commission may sign contracts with eligible students at or after the time of loan origination to assure loan repayment.

89 Acts, ch 300, §16 HF 644  
NEW section

**261.51 Science and mathematics loan program.** Repealed by 89 Acts, ch 319, §83. HF 774

**261.52 Loans.** Repealed by 89 Acts, ch 319, §83. HF 774

**261.53 Appropriation.** Repealed by 89 Acts, ch 319, §83. HF 774

**261.54 Repayment.**

Repayment of a loan made under the science and mathematics loan program prior to July 1, 1988, shall begin one year after the recipient completes the educational program for which tuition and fees were received except as otherwise provided in this section. If a recipient submits evidence to the commission that the recipient was employed as a teacher of one or more science or mathematics courses or as an elementary teacher teaching science and mathematics in a public school district or nonpublic school in this state or at the Iowa braille and sight-saving school or the Iowa school for the deaf during that year, fifty percent of the amount of the loan is canceled. If the recipient continues employment as a teacher of science or mathematics courses or as an elementary teacher teaching science and mathematics during the next succeeding school year and submits evidence to the commission of the continuation of teaching employment, the recipient is not required to commence repayment during that school year and at the end of that school year the remaining fifty percent of the loan is canceled.

There is created a science and mathematics loan repayment fund for deposit of payments made by recipients. Payments made by recipients of the loans shall be used to supplement moneys appropriated to the guaranteed loan payment program. Any funds remaining on June 30 of a fiscal year shall be transferred from the fund created in this section to the general fund of the state.

The interest rate collected on the loan shall be equal to the interest rate being collected by an eligible lender under the guaranteed loan payment program.

The commission shall prescribe by rule the terms of repayment which shall provide for monthly payments of principal and interest of not less than seventy-five dollars.

89 Acts, ch 300, §17 HF 644; 89 Acts, ch 319, §49 HF 774  
See Code editor's note  
Unnumbered paragraphs 1, 2 and 3 amended

**261.61 Supplemental grant program.** Repealed by 88 Acts, ch 1003, §7. Effective July 1, 1989.

**261.62 Payment of grants.** Repealed by 88 Acts, ch 1003, §5. Effective July 1, 1989.

**261.63 Appropriation.** Repealed by 88 Acts, ch 1003, §6. Effective July 1, 1989.

**261.72 Forgivable loan administration.**

The college aid commission shall administer the forgivable loan program in the same manner as specified in section 261.15 for the tuition grant program. The maximum loan that a student is eligible to receive is an amount equal to the maximum tuition grant awarded by the commission for the same fiscal year. A student is eligible to receive both a tuition grant and a forgivable loan. The interest rate for the forgivable loan shall be equal to the interest rate being collected by an eligible lender under the Iowa guaranteed loan payment program for the year in which the forgivable loan is made.

89 Acts, ch 300, §26 HF 644  
Section amended

**261.81 Work-study program.**

The Iowa college work-study program is established to stimulate and promote the part-time employment of students attending Iowa postsecondary educational institutions, and the part-time or full-time summer employment of students registered for classes at Iowa postsecondary institutions during the succeeding school year, who are in need of employment earnings in order to pursue postsecondary education. The program shall be administered by the commission. The commission shall adopt rules under chapter 17A to carry out the program. The employment under the program shall be employment by the postsecondary education institution itself or work in a public agency or private nonprofit organization under a contract between the institution or the commission and the agency or organization. An eligible postsecondary institution that is allocated twenty thousand dollars or more for the work-study program by the commission shall allocate at least ten percent of the funds received for student employment in a public agency or private nonprofit organization that is accredited, approved, licensed, registered, certified, or operated by the department of human services, the department of natural resources, the department of agriculture and land stewardship, or the department of corrections, or is part of the Iowa heritage corps established in section 261.81A. The work shall not result in the displacement of employed workers or impair or affect existing contracts for services. Moneys used by an institution for the work-study program shall supplement and not supplant jobs and existing financial aid programs provided for students through the institution.

89 Acts, ch 300, §18 HF 644; 89 Acts, ch 319, §50 HF 774  
See Code editor's note  
Section amended

**261.81A Iowa heritage corps.**

An Iowa heritage corps is created. The objectives of the corps are to promote public appreciation of Iowa's natural and cultural heritage, promote the economic development of Iowa tourism, and provide meaningful and productive service and research opportunities for students enrolled in public and private colleges and universities in the state. The corps shall provide opportunities in the areas of historical and cultural preservation and education, community improvement, public policy research, and tourism. The corps shall provide participants with an opportunity to explore careers, gain work experience and college credit, and to contribute to the general welfare of their communities and state.

The commission shall solicit participation in the Iowa heritage corps and cooperate with museums, historical organizations, public and nonprofit agencies, and community development organizations in the development of pilot projects for internship positions to be included in the work-study program under section 261.81 and shall allocate moneys to participating museums, organizations, and agencies for the employment of the students under a pilot project. The internships shall include programs which increase public awareness of, and appreciation for, Iowa's natural and cultural heritage. A public or private person using interns under the corps for a pilot project shall contribute to the eligible postsecondary institution in which the intern is enrolled the cost of tuition for credits earned by the intern and all costs for materials, supplies, travel, and other work-related expenses of the project.

89 Acts, ch 319, §51 HF 774

Allocation to pilot projects for Iowa heritage corps; 89 Acts, ch 319, §9 HF 774  
NEW section

### **261.82 Duties of college aid commission.**

The college aid commission shall:

1. Enter into agreements with eligible postsecondary education institutions for participation in the program.
2. Allocate funds to participating postsecondary education institutions if funds are available to the commission for that purpose.
3. Allocate work-study moneys appropriated to the commission to museums, historical organizations, public and nonprofit agencies, and community development organizations for pilot projects for internships for the Iowa heritage corps.
4. Review reports from participating postsecondary education institutions.
5. Conduct program reviews and audits of participating postsecondary education institutions.
6. Accept gifts, grants, and other aid from public and private persons or agencies.

89 Acts, ch 319, §52 HF 774

NEW subsection 3 and former subsections 3-5 renumbered as 4-6

### **261.84 Student eligibility.**

In order to be eligible, a student must:

1. Be a citizen of the United States and a resident of this state.
2. Be enrolled and making satisfactory academic progress or accepted for enrollment at an eligible postsecondary institution on a half-time or greater basis.
3. Demonstrate financial need. A student's need shall be determined on the basis of a need analysis system approved for use by the commission or under the federal work-study program.
4. Have not defaulted on an Iowa guaranteed loan payment or on a loan guaranteed by the federal government.

89 Acts, ch 300, §19, 26 HF 644

Subsections 3 and 4 amended

### **261.85 Appropriation.**

There is appropriated from the general fund of the state to the commission for each fiscal year the sum of three million dollars for the work-study program.

From moneys appropriated in this section, one million five hundred thousand dollars shall be allocated to institutions of higher education under the state board of regents and merged area schools and the remaining dollars appropriated in this section 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.

89 Acts, ch 319, §58 HF 774

Section amended

## WORK FOR COLLEGE PROGRAM—EDUCATION SAVINGS PROGRAM

**261.86 Legislative intent.**

It is the intent of the general assembly to renew the ethic of civic obligation and spread the responsibilities of citizenship more equitably by expanding opportunities to Iowa's young people to pursue educational, vocational, and professional objectives after secondary school and by mobilizing the same young people to deal with pressing social problems in the state including health, education, literacy, child care, hunger, adequate housing, homelessness, and conservation of natural resources.

89 Acts, ch 300, §20 HF 644  
NEW section

**261.87 Definitions.**

1. "*Academic semester*" means an academic semester as defined in rules adopted by the college aid commission.
2. "*Accredited private institution*" means an institution of higher education as defined in section 261.9, subsection 5.
3. "*Commission*" means the college aid commission.
4. "*Cost of attendance*" means the cost of tuition, room, and board at a public higher education institution attended by a volunteer or, in the case of attendance at an accredited private institution, the highest cost for tuition, room, and board for attendance at a regents' university.
5. "*Department*" means the department of human services.
6. "*Eligible higher education institution*" means an accredited private institution, merged area school, or regents' university.
7. "*Merged area school*" means an area school as defined under section 280A.2, subsection 10.
8. "*Regents' university*" means an institution governed by the state board of regents, as defined under section 262.7, subsections 1, 2, and 3.
9. "*Volunteer*" means a person who meets the eligibility requirements established by the commission and who has been accepted for participation in the Iowa work for college program.
10. "*Voucher*" means a service and education opportunity voucher issued by the commission.

89 Acts, ch 300, §21 HF 644  
NEW section

**261.88 Iowa work for college program.**

An Iowa work for college program is established to be administered jointly by the college aid commission and the department of human services. The program shall be administered under the following conditions:

1. The commission, with the assistance of the department, shall contract with public or nonprofit entities to provide work opportunities for eligible volunteers. The commission, the department, and the public or nonprofit entities may be allotted up to two percent of the funds appropriated for administrative purposes and expenses of the program. The commission shall adopt rules and forms, as needed, for the administration of the program.
2. The commission shall establish guidelines and procedures for application and acceptance to the program. Guidelines established shall be based on a person's financial need, the person's inability to attend college without acceptance into the program, or the likelihood that the person would incur heavy debt repayment obligations if the person attended college, given the person's anticipated financial assistance alternatives.
3. Program volunteers shall receive stipends equivalent to seven hundred dollars per month for each month of work completed under the program. The state shall contribute five hundred dollars per month and the employer shall either

contribute two hundred dollars per month to the volunteer's stipend or provide the volunteer with room and board. The employer shall also contribute one hundred dollars per month to the education trust fund created pursuant to section 261.90. The volunteer may elect to defer receipt of the employer's stipend contribution and receive a single lump sum stipend amount upon completion of the period of service under the program.

4. Upon completion of the service, the volunteer shall receive vouchers entitling the volunteer to educational benefits. Each voucher shall have a value equal to the cost of the volunteer's attendance for one academic semester at an eligible higher education institution. The volunteer participant shall receive four vouchers for each year of service completed. The vouchers may be redeemed at an eligible higher education institution. Only one voucher may be redeemed per semester of attendance by a program participant. Vouchers must be redeemed within ten years of the date of issuance and are not transferable.

5. Volunteers may be assigned work for any public or nonprofit entity for a period of either one or two years. The volunteers shall agree to make a full-time commitment to a work assignment as approved by the commission and the department. The volunteers shall be available to work at least forty hours per week without regard to regular working hours and at all times during their periods of work, except for authorized periods of leave. The work assignments shall not be made to replace regular employees or for participation in religious or political activities.

6. The public or nonprofit entity to which an individual is assigned shall supervise and direct that individual in the same manner as other employees and shall pay for all necessary work materials, supplies, and transportation costs. The state shall provide general liability and workers' compensation coverage for the volunteers, under chapter 25A, as if the volunteers were state employees. The volunteers are exempt from chapter 96, under section 96.19, subsection 6, paragraph "a", subparagraph (6), subdivision (e), and are exempt from chapters 19A, 97A, and 400.

89 Acts, ch 300, §22 HF 644  
NEW section

### **261.89 Acceptance and redemption of vouchers.**

Eligible higher education institutions shall accept vouchers from students enrolled in the institutions and shall remit any vouchers received to the commission. The commission shall transmit an amount to the institution which equals the cost of attendance for the current semester. If a student discontinues attendance before the end of a semester, the entire amount of the refund that the student would be eligible to receive if the student had paid the tuition, room, and board, shall be repaid to the commission and shall revert to the trust fund created under section 261.90. The commission shall issue the student a voucher equal in value to the amount of the refund received by the trust fund. The commission shall redeem the value of each voucher from the employer contributions for that student, in accordance with the proportion that the voucher is to total number of vouchers earned by the student, and from the Iowa work for college funds which are appropriated by the general assembly and deposited into the trust fund under section 261.90.

89 Acts, ch 300, §23 HF 644  
NEW section

### **261.90 Iowa college trust fund.**

The Iowa college trust fund is created as a repository for deposits made by employers under the work for college program for volunteers under that program, state appropriations for the work for college program, and state appropriations and other moneys deposited into the trust fund for the education savings program.

The fund is created as a separate fund in the state treasury, and any moneys remaining in the fund at the end of each fiscal year shall not revert to the general fund, notwithstanding section 8.33, but shall remain in the Iowa college trust fund. Interest or other income earned by the fund shall be deposited in the fund. Moneys deposited by employers of volunteers in the work for college program shall be deposited and accounted for in the name of the volunteer for whom the money is deposited. Moneys deposited in the name of a person named by the trustor under the education savings program shall be accounted for separately from moneys deposited for the work for college program. Money in the fund may be distributed by the college aid commission to carry out the duties of administration of the work for college program and the education savings program and moneys in the fund are appropriated for those purposes.

89 Acts, ch 300, §24 HF 644  
NEW section

### **261.91 Education savings program.**

1. An education savings program is established to be administered by the college aid commission. The program will provide funds to match moneys in education savings accounts established for qualifying individuals.

Not later than April 15 of each year, the commission shall receive applications for matching funds from trustors of education savings accounts. Matching funds shall be granted by the commission based upon the moneys appropriated by the general assembly for the program and the income of the applicants. Each applicant shall submit evidence to the commission of the amount of money deposited in the applicant's education savings account during the preceding calendar year and the applicant's adjusted gross income during the preceding calendar year and other financial information deemed necessary by the commission.

The commission shall categorize the applicants based upon the income criteria and shall distribute matching funds, to the extent that the commission determines is appropriate to the category and to the extent that moneys are available for the program, on the following basis:

a. For an applicant whose income is less than one hundred fifty percent of the poverty level established by the federal office of management and budget, one dollar for each dollar deposited in an education savings account.

b. For an applicant whose income is between one hundred fifty and one hundred ninety-nine percent of the federal poverty level established by the federal office of management and budget, fifty cents for each dollar deposited in an education savings account.

c. For an applicant whose income is between two hundred and two hundred fifty percent of the federal poverty level established by the federal office of management and budget, twenty-five cents for each dollar deposited in an education savings account.

Matching funds for a year shall not exceed two thousand dollars if the beneficiary is not the trustor. If the beneficiary is the trustor, matching funds and funds contributed by the trustor shall not exceed two hundred dollars per year and the total matching funds and trustor contributions shall each not exceed two thousand dollars.

When the trustor submits evidence to the commission that distribution has been made from an education savings account and the distribution is used exclusively to pay certified eligible education expenses incurred by the trustor for the beneficiary, the college aid commission shall make distribution of moneys in the Iowa college trust fund that have been designated for the trustor in an amount not to exceed the difference between the certified eligible education expenses of the beneficiary for the year and the distribution from the education savings account.

When a beneficiary is no longer eligible for distribution of funds from an education savings account, any funds remaining in the Iowa college trust fund

that have been designated for that beneficiary shall have the designation removed.

For the purposes of this subsection, an education savings account is a trust created or organized in the United States for the exclusive benefit of the one individual named by the trustor.

2. The trust must meet the following requirements:

a. The trustee must be a bank, credit union, savings and loan association, or a person who demonstrates to the satisfaction of the director of the department of revenue and finance that the manner in which the person will administer the trust will be consistent with the requirements of this section.

b. The trust funds shall not be invested in life insurance contracts.

c. The interest of the trustor in the balance of the trust shall be nonforfeitable.

d. The assets of the trust shall not be commingled with other property except in a common trust fund or a common investment fund.

e. The books and records of the trust shall be kept in accordance with this subsection using the tax year of the trustor and the tax year shall be specified in the governing instrument.

f. The trust shall be created to be an education savings account for the benefit of one named individual, and the date of birth of the named individual shall be specified. A trustor may establish only one trust under this subsection.

g. Contributions shall be accepted only from the trustor.

h. Contributions shall be accepted only in cash.

i. If the beneficiary is not the trustor, a balance in the account on the day after the day on which the beneficiary attains thirty years of age, or, if earlier, the date on which the beneficiary dies, shall be distributed on that date; ninety percent to the trustor and ten percent to the college aid trust fund established in section 261.90.

j. If the beneficiary is the trustor, a balance in the account on the day after the day on which the beneficiary attains sixty-five years of age, or, if earlier, the date on which the beneficiary retires or dies, shall be distributed on that date, ninety percent to the trustor, or the trustor's estate, and ten percent to the college aid trust fund established in section 261.90.

k. A beneficiary may be the named individual in only one education savings account.

3. For purposes of this section, the following definitions apply:

a. "Named individual" or "beneficiary" means an eligible individual specified in the written governing instrument of an education savings account.

b. "Eligible individual" means an individual who is the trustor of the account or is a son, daughter, stepson, or stepdaughter of the trustor of the account, or a descendant of any of the individuals listed.

4. For purposes of this section, a custodial account shall be treated as a trust if the assets of the account are held by a bank, credit union, savings and loan association, or another person who demonstrates to the satisfaction of the director, that the manner in which that person will administer the account will be consistent with the requirements of this subsection, and if the custodial account would, except for the fact that it is not a trust, constitute an education savings account. In the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of the account shall be treated as the trustee of the account.

## MINORITY ACADEMIC GRANTS FOR ECONOMIC SUCCESS

**261.101 Legislative intent.**

The general assembly finds that the failure of many young Iowans to complete their education limits their opportunity for a life of fulfillment and hinders the state's efforts to provide a well-trained work force for business and industry in Iowa. The general assembly also declares that it is the policy of this state to apply positive measures to ensure that equal opportunities exist for minority persons to pursue their educational goals. Therefore, the "*Iowa Minority Academic Grants for Economic Success*" program is established to provide additional funding to the state board of regents' institutions and accredited private institutions in order to encourage resident minority students to remain in Iowa, to attend colleges and universities in Iowa, and to assure that a limited family income will not be a barrier for a minority person to pursue a postsecondary education.

89 Acts, ch 319, §53 HF 774  
NEW section

**261.102 Definitions.**

1. "*Accredited private institution*" means an institution of higher education as defined in section 261.9, subsection 5.
2. "*Commission*" means the college aid commission.
3. "*Financial need*" means the difference between the student's financial resources, including resources available from the student's parents and the student, as determined by a completed parents' financial statement and including any noncampus-administered federal or state grants and scholarships, and the student's estimated expenses while attending the institution. A student shall accept all available federal and state grants and scholarships before being considered eligible for grants under the Iowa minority academic grants for economic success program. Financial need shall be reconsidered on at least an annual basis.
4. "*Full-time student*" means an individual who is enrolled at an accredited private institution or board of regents' university for at least twelve semester hours or the trimester or quarter equivalent.
5. "*Minority person*" means an individual who is black, Hispanic, Asian, or a Pacific islander, American Indian, or an Alaskan native American.
6. "*Part-time student*" means an individual who is enrolled at an accredited private institution or board of regents' university in a course of study including at least three semester hours or the trimester or quarter equivalent of three semester hours.
7. "*Program*" means the Iowa minority academic grants for economic success program established in this division.

89 Acts, ch 319, §54 HF 774  
NEW section

**261.103 Program qualifications.**

1. A grant under the program may be awarded to any minority person who is a resident of Iowa, who is accepted for admission or is attending a board of regents' university or an accredited private institution, and who demonstrates financial need. Applicants who receive vouchers under section 262.92 shall be given priority in receiving grants under the program, but an applicant shall not be denied a grant because the applicant does not hold vouchers under the program in section 262.92. During the fiscal year commencing July 1, 1989, and ending June 30, 1990, grants shall be awarded to minority persons who are residents of Iowa. For the fiscal year commencing July 1, 1990, and in subsequent years, grants shall be awarded to all minority persons, with priority to be given to those minority persons who are residents of Iowa.

2. Full-time students may receive grants for not more than eight semesters of undergraduate study or the trimester or quarter equivalent of eight semesters of undergraduate study. Part-time students may receive grants for not more than sixteen semesters of undergraduate study or the trimester or quarter equivalent of sixteen semesters of undergraduate study.

3. The amount of the grant shall not exceed a student's yearly financial need or three thousand five hundred dollars, whichever is less. If the student is attending or seeking to enroll in an accredited private institution, fifty percent of the amount of the grant shall be provided by the accredited private institution and fifty percent shall be provided by the commission from state funds appropriated for that purpose.

4. Grants shall be awarded on an annual basis and shall be credited by the institution against the student's tuition, fees, room, and board, at the beginning of each semester, trimester, or quarter in equal installments upon certification by the institution that the student is admitted and attending the institution.

5. If a student receiving a grant under the program discontinues attendance before the end of any academic period, but after receiving payment of grant moneys for the academic period, the entire amount of any refund due the student, up to the amount of any payments made by the state, shall be remitted by the private institution to the commission.

89 Acts, ch 319, §55 HF 774; 89 Acts, ch 322, §8 HF 799  
NEW section and subsection 1 amended

#### **261.104 Powers of the commission.**

In administering the program for the private institution, the commission shall:

1. Provide application forms to students enrolled and attending or seeking to enroll and attend accredited private institutions.

2. Develop and provide confidential financial statement forms to the parents or guardians of students applying for grants under this program.

3. Approve and award grants to private institutions under the program.

4. Adopt rules for determining financial need and residency for the purpose of awarding grants to qualified students, and any other rules necessary for the administration of the program.

5. Report annually to the governor and the general assembly on the progress and implementation of the program.

6. Require postsecondary institutions that receive moneys from students awarded grants under the program to furnish any information necessary for the implementation or administration of the program.

7. Solicit and receive private contributions and federal grants available for purposes of the program.

8. Maintain records on the recipients of vouchers under section 262.92 and adopt rules to provide for the giving of priority to students holding vouchers under that section.

9. Administer funds appropriated for the Iowa minority academic grants for economic success program to carry out the duties of the commission.

10. Provide for the proration of funds among qualified applicants if funds available are insufficient to pay all approved grants.

89 Acts, ch 319, §56 HF 774  
NEW section

#### **261.105 Duties of applicant.**

An applicant for a grant under the program shall:

1. Complete and file an application for a grant on forms provided by the commission or regents' institutions.

2. Submit the financial information required for evaluation of the applicant's financial need for a grant.

3. Comply with rules and information requests of the commission or regents' institutions made in relation to the program.

89 Acts, ch 319, §57 HF 774  
NEW section

## CHAPTER 261C

### POSTSECONDARY ENROLLMENT OPTIONS

Sunset provision repealed; 89 Acts, ch 31, §1 HF 666

## 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 pilot programs to be continued, expanded; 89 Acts, ch 304, §802 SF 538  
Citizens postsecondary education task force to report recommendations to general assembly by July 1, 1990;  
88 Acts, ch 1284, §65

#### 262.9 Powers and duties.

The board shall:

1. Each even-numbered year elect, from its members, a president of the board, who shall serve for two years and until a successor is elected and qualified.
2. Elect a president of each of the institutions of higher learning; a superintendent of each of the other institutions; a treasurer and a secretarial officer for each institution annually; professors, instructors, officers, and employees; and fix their compensation. Sections 279.12 through 279.19 and section 279.27 apply to employees of the Iowa braille and sight-saving school and the state school for the deaf, who are licensed pursuant to chapter 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 the institutions. The board shall purchase or require the purchase of, whenever the price is reasonably competitive and the quality intended, and in keeping with the schedule established in this subsection, soybean-based inks and starch-based plastics, including but not limited to starch-based plastic garbage can liners.
  - a. By July 1, 1989, a minimum of fifty percent of the purchases of inks which are used for newsprint paper for printing services performed internally or contracted for by the board shall be soybean-based.
  - b. By July 1, 1989, a minimum of fifteen percent of the purchases of garbage can liners made by the board shall be starch-based plastic garbage can liners. The percentage purchased shall increase by five percent annually until fifty percent of the purchases of garbage can liners are purchases of starch-based plastic garbage can liners.
  - c. The board shall report to the general assembly on January 1 of each year, the plastic products which are regularly purchased by the board for which starch-based product alternatives are available. The report shall also include the cost of the plastic products purchased and the cost of the starch-based product alternatives.
5. In conjunction with the recommendations made by the department of natural resources, purchase and use recycled printing and writing paper, with the exception of specialized paper when no recyclable product is available, in

accordance with the schedule established in section 18.18; establish a wastepaper recycling program by January 1, 1990, for all institutions governed by the board in accordance with recommendations made by the department of natural resources and the requirements of section 18.20; comply with, and the institutions governed by the board shall also comply with the recycling goal, recycling schedule, and ultimate termination of purchase and use of polystyrene products for the purpose of storing, packaging, or serving food for immediate consumption pursuant to section 455D.16; and shall, in accordance with the requirements of section 18.6, require product content statements, the provision of information regarding on-site review of waste management in product bidding and contract procedures, and compliance with requirements regarding procurement specifications.

6. 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.

7. 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.

8. 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.

9. Collect the highest rate of interest, consistent with safety, obtainable on daily balances in the hands of the treasurer of each institution.

10. 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.

11. With consent of the inventor and in the discretion of the board, secure letters patent or copyright on inventions of students, instructors and officials, or take assignment of such letters patent or copyright and may make all necessary expenditures in regard thereto. 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.

12. Perform all other acts necessary and proper for the execution of the powers and duties conferred by law upon it.

13. Grant leaves of absence with full or partial compensation to staff members to undertake approved programs of study, research, or other professional activity which in the judgment of the board will contribute to the improvement of the institutions. Any staff member granted such leave shall agree either to return to the institution granting such leave for a period of not less than two years or to repay to the state of Iowa such compensation as the staff member shall have received during such leave.

14. Lease properties and facilities, either as lessor or lessee, for the proper use and benefit of said institutions upon such terms, conditions, and considerations as the board deems advantageous, including leases with provisions for ultimate ownership by the state of Iowa, and to pay the rentals from funds appropriated to the institution for operating expenses thereof or from such other funds as may be available therefor.

15. In its discretion employ or retain attorneys or counselors when acting as a public employer for the purpose of carrying out collective bargaining and related responsibilities provided for under chapter 20. This subsection shall supersede the provisions of section 13.7.

The state board of regents may make payment to an attorney or counselor for services rendered prior to July 1, 1978 to the state board of regents in connection with its responsibilities as a public employer pursuant to chapter 20.

16. In its discretion, adopt rules relating to the classification of students enrolled in institutions of higher education under the board who are residents of Iowa's sister states as residents or nonresidents for fee purposes.

17. In issuing bonds or notes under this chapter, chapter 262A, chapter 263A, or other provision of law, select and fix the compensation for, through a competitive selection procedure, attorneys, accountants, financial advisors, banks, underwriters, insurers, and other employees and agents which in the board's judgment are necessary to carry out the board's intention. Prior to the initial selection, the board shall establish a procedure which provides for a fair and open selection process including, but not limited to, the opportunity to present written proposals and personal interviews. The board shall maintain a list of firms which have requested to be notified of requests for proposal. The selection criteria shall take into consideration, but are not limited to, compensation, expenses, experience with similar issues, scheduling, ability to provide the services of individuals with specific knowledge in the relevant subject matter and length of engagement. The board may waive the requirements for a competitive selection procedure for any specific employment upon adoption of a resolution of the board stating why the waiver is in the public interest and shall provide the executive council with written notice of the granting of any such waiver.

18. Not less than thirty days prior to action by the board on any proposal to increase tuition, fees, or charges at one or more of the institutions of higher education under its control, send written notification of the amount of the proposed increase including a copy of the proposed tuition increase docket memorandum prepared for its consideration to the presiding officers of the student government organization of the affected institutions. The final decision on 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.

19. Adopt policies and procedures for the use of telecommunications as an instructional tool at its institutions. The policies and procedures shall include but not be limited to policies and procedures relating to programs, educational policy, practices, staff development, use of pilot projects, and the instructional application of the technology.

20. Establish a hall of fame for distinguished graduates at the Iowa braille and sight-saving school and at the Iowa school for the deaf.

21. Assist a nonprofit organization located in Sioux City in the creation of a tristate graduate center, comparable to the quad cities graduate center, located in the quad cities in Iowa. The purpose of the Sioux City graduate center shall be to create graduate education opportunities for students living in northwest Iowa.

22. Direct the administration of the Iowa minority academic grants for economic success program as established in section 261.101 for the institutions under its control.

89 Acts, ch 265, §40 HF 794; 89 Acts, ch 272, §23 HF 753; 89 Acts, ch 319, §59 HF 774  
Section 2 amended  
NEW subsection 5 and former subsections 5-19 renumbered as 6-20  
NEW subsections 21 and 22

### **262.25A Purchase of fuel efficient automobiles.**

Institutions under the control of the state board of regents shall purchase only new automobiles which have at least the fuel economy required for purchase of new automobiles by the state vehicle dispatcher under section 18.115, subsection 4. This section does not apply to automobiles purchased for law enforcement purposes.

89 Acts, ch 297, §4 SF 419  
NEW section

### **262.76 through 262.80 Reserved.**

#### REGENTS' MINORITY AND WOMEN EDUCATORS ENHANCEMENT

### **262.81 Legislative intent.**

The general assembly recognizes that educational programs designed to enhance the interrelation and cooperation among cultural, racial, and ethnic groups in society require the contribution and active participation of all ethnic and racial groups. The general assembly also recognizes that failure to include minority representation at the faculty level at the state universities contributes to cultural, racial, and ethnic isolation of minority students and does not reflect the realities of a multicultural and diverse society. Therefore, the "*Regents' Minority and Women Educators Enhancement*" program is established to assist in the recruitment and retention of faculty that more adequately represents the diverse cultural, racial, and ethnic makeup of society and to improve the education of all students.

89 Acts, ch 319, §61 HF 774  
NEW section

### **262.82 Regents' minority and women educators enhancement program.**

The board of regents shall establish a program to recruit minority educators to faculty positions in the universities under the board's control. The program shall include, but is not limited to, the creation of faculty positions in all areas of academic pursuit.

The board of regents shall also establish a program to create faculty opportunities for women educators at the universities under the board's control. The program shall include, but is not limited to, the creation of faculty positions in targeted shortage areas. The board of regents shall also develop and implement, in consultation with appropriate faculty representatives, tenure, promotion, and hiring policies that recognize the unique needs of faculty members who are principal caregivers to dependents.

As used in this section, "*minority educator*" means an educator who is a minority person as defined in section 261.102.

89 Acts, ch 319, §62 HF 774  
NEW section

### **262.83 through 262.90 Reserved.**

#### COLLEGE-BOUND PROGRAM

### **262.91 Legislative intent.**

The general assembly recognizes that universities must provide an environment that enables all students to have an equal opportunity to succeed. The general assembly also recognizes that, because of inequalities in educational preparation,

economic factors, and social circumstances, not all young Iowans have the same degree of access to Iowa's higher education system. The general assembly further acknowledges that an early intervention system using public school districts, community agencies, and other state institutions can be useful in preparing young students to succeed in college. Therefore, the "College-bound" program is established to ensure that the state's universities and students' local communities become involved early in a student's life by promoting and informing students about the opportunities in higher education, so that lack of adequate personal resources is not a barrier to attending college for young Iowans.

89 Acts, ch 319, §63 HF 774  
NEW section

### **262.92 College-bound program.**

1. The board of regents shall establish or contract to establish college-bound programs to provide Iowa minority students with information and experiences relating to opportunities offered at the regents' universities. Programs developed may include, but are not limited to, the following elements:

a. Reinforcement of efforts to attract undergraduate students from age groups currently served by traditional methods of outreach which use high school and community college services.

b. Extension of traditional student recruitment methods which are designed to encourage minority students in grades seven through twelve to pursue postsecondary academic courses of study.

c. Identification, at each of the regents' universities, of courses of study to be targeted for the recruitment of minority students.

d. Offerings at the regents' universities of innovative programs, which are experience oriented, for families with minority children.

2. The board of regents shall establish a voucher program for students in grades seven through twelve. Vouchers may be obtained by any qualified secondary student at any regents' university upon completion of a college-bound program provided under subsection 1. Students may receive one voucher for each program. One or more vouchers entitle a student to priority over other persons applying for grants under the Iowa minority academic grants for economic success program established in section 261.101. Vouchers shall be submitted with the grant application within one year after a student graduates from high school at any higher education institution which offers grants under the Iowa minority academic grants for economic success program. Vouchers earned can only be used by the person who participated in the college-bound voucher program and are not transferable. Vouchers issued by a university under this program shall be signed by the president of the university.

3. The board of regents shall adopt rules to establish program guidelines for the universities under the board's control and for the administration and coordination of program efforts. Rules adopted shall include methods of recording data relating to voucher recipients and making the data available to the college aid commission.

89 Acts, ch 319, §64 HF 774  
NEW section

### **262.93 Reports to general assembly.**

The college aid commission and the state board of regents each shall submit, by January 1 of each year, a report on the progress and implementation of the programs which they administer under sections 261.102 through 261.105, 262.82, and 262.92. The reports shall include, but are not limited to, the numbers of students participating in the programs and allocation of funds appropriated for the programs.

89 Acts, ch 319, §65 HF 774  
NEW section

## CHAPTER 262B

### UNIVERSITY-BASED RESEARCH AND ECONOMIC DEVELOPMENT

#### 262B.4 Duties of the consortium.

1. Each consortium shall assist the university in efforts to maximize the economic benefits outlined in section 262B.2. More specifically, it shall assist the university by making recommendations for:

a. The development of strategies and materials useful in marketing university resources to out-of-state firms interested in an Iowa site.

b. Matching university resources with the needs of existing Iowa firms.

c. Evaluation of university research for commercial potential.

d. The development of a plan that will improve private sector access to the university and the transfer of technology from the university to the private sector.

2. In order to carry out its objectives the consortium shall perform, but is not limited to, the following tasks:

a. Receive and review selected research synopses.

b. Disseminate information on research activities of the university.

c. Identify research needs of existing Iowa businesses and recommend ways in which the university can meet these needs.

d. On a case-by-case basis, suggest business and financial tactics useful in realizing the commercial potential of university research projects.

e. Provide applied technical referral services, if appropriate, including but not limited to the following duties:

(1) To determine and evaluate the research or applied technology needs of businesses and farms requesting assistance.

(2) To recommend technology transfer strategies to farms for more efficient production of agricultural commodities, or to businesses for developing and testing new products, adapting new technologies to manufacturing processes or methods, conducting marketing analyses of new products or processes, and identifying potential financing on new technology-based products or manufacturing processes.

(3) To refer businesses and farmers to universities, community colleges, small business development centers, other private businesses, and other research and technology transfer activities and programs which are beneficial to the development of new products and the application of technology.

89 Acts, ch 258, §22 HF 686  
Subsection 2, NEW paragraph e

## CHAPTER 263

### UNIVERSITY OF IOWA

**263.8B Interest earnings.** If the interest earned on moneys accumulated by campus organizations at the university of Iowa is not available for expenditure by those respective campus organizations, the university of Iowa shall allocate that interest to campus improvements that are of benefit to students and have been accepted by the student government or to the student financial aid office to be used for the work-study program.

89 Acts, ch 319, §67 HF 774  
NEW section

## CHAPTER 263A

### MEDICAL AND HOSPITAL BUILDINGS AT UNIVERSITY OF IOWA

#### 263A.13 Hospital reports to general assembly.

The university of Iowa hospitals and clinics shall compile and transmit to the general assembly the following information by December 15 of each fiscal year:

1. Revenue from all income sources, by source, including but not limited to state appropriations, other state funds, tuition income, patient charges, payments from political subdivisions, interest income, and gifts, and grants from public and private sources.

2. Expenditures by program and revenue source.

3. Net revenue over spending from hospital operations, including the method used to calculate the results.

The legislative fiscal bureau shall develop forms for collecting the information required in this subparagraph.

89 Acts, ch 319, §68 HF 774  
NEW section

## CHAPTER 266

### IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY

Extension service is central clearinghouse in each county for drought-related information, and to coordinate drought-related activities

#### 266.20 Interest earnings.

If the interest earned on moneys accumulated by campus organizations at the Iowa state university of science and technology is not available for expenditure by those respective campus organizations, the Iowa state university of science and technology shall allocate that interest to campus improvements that are of benefit to students and have been accepted by the student government or to the student financial aid office to be used for the work-study program.

89 Acts, ch 319, §70 HF 774  
NEW section

#### 266.39A Agricultural research.

Iowa state university of science and technology shall conduct continuing agricultural research to provide information about environmental and social impacts of agricultural research on the small or family farm and information about population trends and impact of the trends on Iowa agriculture, in addition to research that may include the categories specified in section 266.39B, subsection 2. The research shall include an agricultural land tenure study conducted every five years to determine the ownership of farmland, by county, and to analyze the ownership trends, using the categories of land ownership defined in chapter 172C.

89 Acts, ch 319, §71 HF 774  
NEW section

#### 266.39B Research grants.

1. A comprehensive agricultural research program is established at the Leopold center for sustainable agriculture at Iowa state university of science and technology to provide financial assistance for agricultural research within Iowa. The Leopold center shall establish a grant program for projects designated by the general assembly and other projects deemed necessary for the betterment of agriculture within the state. All funds from the program shall be available to

public and private entities in Iowa on a competitive grant basis. Approved research proposals shall meet all of the following criteria:

- a. The research shall assist Iowa in maintaining productive soil, viable communities, and farms with incomes sufficient to support a family.
- b. The research shall enhance the profitability of farmers.
- c. The research shall lead to farming which enhances and preserves Iowa's environment.

2. The research grants shall include:

a. Long-term and basic research with preference given to projects which have no traditional funding sources or require a long period of time to produce positive or negative results.

b. Emergency response research with preference given to projects which relate to issues expected to address problems occurring within the next five years, which relate to problems that could have substantial social and economic costs, or which offer research opportunities that may be lost if a delay occurs.

c. Grants available for matching federal or private funds for projects which are a necessary component of other grants or will produce the highest ratio of outside funds to state funds.

d. Crop and livestock research relating to the growth, processing, or marketing of agricultural output, the enhancement of the quality of crops, the lowering of the costs of production, or the avoidance of contamination to food, water, or soil.

e. Alternative crop research to enhance the opportunity for self-employment, to promote site-appropriate crops, to assist the state in becoming more self-sufficient in food and energy resources, to grow, process, and market new crops, or to develop the infrastructure to support new crops.

f. Research dissemination which will expand the knowledge of potential producers, or will collect, create, or disseminate agricultural knowledge, which will encourage the exchange of agriculturally related information among researchers, or which will provide access to farmers to information resources related to agriculture.

g. Agriculture health and safety research to identify, investigate, and increase awareness of agriculture safety problems, develop practical solutions to agriculture safety problems, develop ways to increase awareness and use of safety practices and devices, to improve medical professionals' ability to diagnose farm-related problems, or to reduce the accident and mortality rate in the agricultural industry.

89 Acts, ch 319, §72 HF 774  
NEW section

## CHAPTER 268

### UNIVERSITY OF NORTHERN IOWA

#### 268.3 Interest earnings.

If the interest earned on moneys accumulated by campus organizations at the university of northern Iowa is not available for expenditure by those respective campus organizations, the university of northern Iowa shall allocate that interest to campus improvements that are of benefit to students and have been accepted by the student government or to the student financial aid office to be used for the work-study program.

89 Acts, ch 319, §73 HF 774  
NEW section

**268.4 Iowa waste reduction center for the safe and economic management of solid waste and hazardous substances.**

1. The Iowa waste reduction 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.

5. This section does not do any of the following:

- a. Relieve a person receiving assistance under this section of any duties or liabilities otherwise created or imposed upon the person by law.
- b. Transfer to the state, the University of Northern Iowa, or an employee of the state or the university, a duty or liability otherwise imposed by law on a person receiving assistance under this section.
- c. Create a liability to the state, the University of Northern Iowa, or an employee of the state or the university for an act or omission arising from the providing of assistance or advice in cleaning up, handling, or disposal of hazardous waste. However, an individual may be liable if the act or omission results from intentional wrongdoing or gross negligence.

89 Acts, ch 77, §1 HF 329  
Section amended

## CHAPTER 272A

### PROFESSIONAL TEACHING PRACTICES COMMISSION

## CHAPTER 273

## AREA EDUCATION AGENCY

**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, and at the request of local school districts to providers of child development services who have received grants under chapter 256A from the child development coordinating council, 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.

89 Acts, ch 135, §57 HF 535  
Unnumbered paragraph 5 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, and chapters 257 and 281. 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 257 and 281.

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 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. Rules adopted by the state board of education shall be consistent with rules, adopted by the board of educational examiners, relating to licensing of practitioners.

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 license issued under chapter 260. 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. Section 279.13 applies to the area education agency board and to all teachers employed by the area education agency. Sections 279.23, 279.24 and 279.25 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 257. 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 February 1 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 February 15 preceding the next fiscal year for approval. The state board shall review the proposed budget of each area education agency and shall before March 1, either grant approval or return the budget without approval with comments of the state board included. An 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, 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 co-ordination 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.

89 Acts, ch 135, §58 HF 535; 89 Acts, ch 265, §34 HF 794  
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)  
1989 amendments to subsections 2 and 12 take effect July 1, 1990, for purpose of computations required for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535  
Subsections 2, 5, 11 and 12 amended

**273.5 Special education.**

There shall be established a division of special education of the area education agency which shall provide for special education programs and services to the local school districts. The division of special education shall be headed by a director of special education who meets certification standards of the department of education. The director of special education shall have the responsibility for implementation of state regulations and guidelines relating to special education programs and services. The director of special education shall have the following powers and duties:

1. Properly identify children requiring special education.
2. Insure that each child requiring special education in the area receives an appropriate special education program or service.
3. Assign appropriate weights for each child requiring special education programs or services as provided in section 281.9.
4. Supervise special education support personnel.
5. Provide each school district within the area served and the department of education with a special education weighted enrollment count, including the additional enrollment because of special education for December 1 of each year.
6. Submit to the department of education special education instructional and support program plans and applications, subject to criteria listed in chapter 281 and this chapter, for approval by February 15 of each year for the school year commencing the following July 1.
7. Co-ordinate the special education program within the area served.

89 Acts, ch 135, §59 HF 535  
1989 amendment to subsection 6 takes effect July 1, 1990, for purposes of computations required for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535  
Subsection 6 amended

**273.9 Funding.**

1. School districts shall pay for the programs and services provided through the area education agency and shall include expenditures for the programs and services in their budgets, in accordance with this section.

2. School districts shall pay the costs of special education instructional programs with the moneys available to the districts for each child requiring special education, by application of the special education weighting plan in section 281.9. Special education instructional programs shall be provided at the local level if practicable, or otherwise by contractual arrangements with the area education agency board as provided in section 273.3, subsection 5, but in each case the total money available through section 281.9 and chapter 257 because of weighted enrollment for each child requiring special education instruction shall be made available to the district or agency which provides the special education instructional program to the child, subject to adjustments for transportation or other costs which may be paid by the school district in which the child is enrolled.

Each district shall co-operate with its area education agency to provide an appropriate special education instructional program for each child who requires special education instruction, as identified and counted within the certification by the area director of special education or as identified by the area director of special education subsequent to the certification, and shall not provide a special education instructional program to a child who has not been so identified and counted within the certification or identified subsequent to the certification.

3. The costs of special education support services provided through the area education agency shall be funded as provided in chapter 257. Special education support services shall not be funded until the program plans submitted by the special education directors of each area education agency as required by section 273.5 are modified as necessary and approved by the director of the department of education according to the criteria and limitations of chapters 257 and 281.

4. The costs of media services provided through the area education agency shall be funded as provided in section 257.37.\* Media services shall not be funded until the program plans submitted by the administrators of each area education agency as required by section 273.4 are modified as necessary and approved by the director of the department of education according to the criteria and limitations of sections 257.37\* and 273.6.

5. The costs of educational services provided through the area education agency shall be funded within the limitations in section 257.37.\*

The state board of education shall adopt rules under chapter 17A relating to the approval of program plans under this section.

89 Acts, ch 135, §60 HF 535

\*Section 257.37 was vetoed by the governor; 89 Acts, ch 135, §37 HF 535

1989 amendments take effect July 1, 1990, for purpose of computations required for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535

Section amended

### 273.12 Funds—use restricted.

Funds generated for educational services under section 257.37\* and subject to approval under section 273.9, subsection 5, shall not be expended by an area education agency for the purpose of assisting either a public employer or employee organization in collective bargaining negotiations under chapter 20 if the public employer is a school district, or the employee organization consists of employees of a school district, located within the boundaries of the area education agency.

89 Acts, ch 135, §61 HF 535

\*Section 257.37 was vetoed by the governor; 89 Acts, ch 135, §37 HF 535

1989 amendments take effect July 1, 1990, for purpose of computations required for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535

Section amended

### 273.13 Administrative expenditures.

During the budget year beginning July 1, 1989, and the three succeeding budget years, the board of directors of an area education agency in which the administrative expenditures as a percent of the area education agency's operating fund for a base year exceed five percent shall reduce its administrative expenditures to five percent of the area education agency's operating fund. During each of the four years, the board of directors shall reduce administrative expenditures by twenty-five percent of the reduction in administrative expenditure required by this section. Thereafter, the administrative expenditures shall not exceed five percent of the operating fund. Annually, the board of directors shall certify to the department of education the amounts of the area education agency's expenditures and its operating fund. For the purposes of this section, "base year" and "budget year" mean the same as defined in section 442.6, Code 1989, and section 257.2, and "administrative expenditures" means expenditures for executive administration.

89 Acts, ch 135, §62 HF 535

1989 amendments take effect July 1, 1990, for purpose of computations required for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535

Section amended

## CHAPTER 275

## REORGANIZATION OF SCHOOL DISTRICTS

**275.12 Petition—method of election.**

1. A petition describing the boundaries, or accurately describing the area included therein by legal descriptions, of the proposed district, which boundaries or area described shall conform to plans developed or the petition shall request change of the plan, shall be filed with the area education agency administrator of the area education agency in which the greatest number of qualified electors reside. However, the area education agency administrator shall not accept a petition if any of the school districts affected have approved the issuance of general obligation bonds at an election pursuant to section 296.6 during the preceding six-month period. The petition shall be signed by qualified electors in each existing school district or portion affected equal in number to at least twenty percent of the number of qualified electors or four hundred qualified electors, whichever is the smaller number.

2. The petition filed under subsection 1 shall also state the name of the proposed school district and the number of directors which may be either five or seven and the method of election of the school directors of the proposed district. The method of election of the directors shall be one of the following optional plans:

a. Election at large from the entire district by the electors of the entire district.

b. Division of the entire school district into designated geographical single director or multi-director subdistricts on the basis of population for each director, to be known as director districts, each of which director districts shall be represented on the school board by one or more directors who shall be residents of the director district but who shall be elected by the vote of the electors of the entire school district. The boundaries of the director districts and the area and population included within each district shall be such as justice, equity, and the interests of the people may require. Changes in the boundaries of director districts shall not be made during a period commencing sixty days prior to the date of the annual school election. Insofar as may be practicable, the boundaries of the districts shall follow established political or natural geographical divisions.

c. Election of not more than one-half of the total number of school directors at large from the entire district and the remaining directors from and as residents of designated single-member or multi-member director districts into which the entire school district shall be divided on the basis of population for each director. In such case, all directors shall be elected by the electors of the entire school district. Changes in the boundaries of director districts shall not be made during a period commencing sixty days prior to the date of the annual school election.

d. Division of the entire school district into designated geographical single director or multi-director subdistricts on the basis of population for each director, to be known as director districts, each of which director districts shall be represented on the school board by one or more directors who shall be residents of the director district and who shall be elected by the voters of the director district. Place of voting in the director districts shall be designated by the commissioner of elections. Changes in the boundaries of director districts shall not be made during a period commencing sixty days prior to the date of the annual school election.

e. In districts having seven directors, election of three directors at large by the electors of the entire district, one at each annual school election, and election of the remaining directors as residents of and by the electors of individual geographic subdistricts established on the basis of population and identified as director districts. Boundaries of the subdistricts shall follow precinct boundaries, insofar as practicable, and shall not be changed less than sixty days prior to the annual school election.

3. If the petition proposes the division of the school district into director districts, the boundaries of such proposed director districts shall be described in the petition.

4. The area education agency board in reviewing the petition as provided in sections 275.15 and 275.16 shall review the proposed method of election of school directors and may change or amend the plan in any manner, including the changing of boundaries of director districts if proposed, or to specify a different method of electing school directors as may be required by law, justice, equity, and the interest of the people. In the action, the area education agency board shall follow the same procedure as is required by sections 275.15 and 275.16 for other action on the petition by the area education agency board.

5. The petition may also include a provision that the voter-approved physical plant and equipment levy provided in section 298.2, will be voted upon at the election conducted under section 275.18.

89 Acts, ch 135, §64 HF 535  
1989 amendments to subsection 5 take effect July 1, 1990, for purpose of computations for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535  
Subsection 5 amended

### **275.20 Separate vote in existing districts.**

The voters shall vote separately in each existing school district affected and voters residing in the entire existing district are eligible to vote upon the proposition to create a new school corporation and the proposition to levy the voter-approved physical plant and equipment levy under section 298.2, if the petition included a provision for a vote to authorize the levy. If a proposition receives a majority of the votes cast in each of at least seventy-five percent of the districts, and also a majority of the total number of votes cast in all of the districts, the proposition is carried.

89 Acts, ch 135, §66 HF 535  
1989 amendments take effect July 1, 1990, for purpose of computations for school budget year beginning July 1, 1991;  
89 Acts, ch 135, §141 HF 535  
Section amended

### **275.23A Redistricting following federal decennial census.**

1. School districts which have directors who represent director districts as provided in section 275.12, subsection 2, paragraphs *b* through *e*, shall be divided into director districts on the basis of population as determined from the most recent federal decennial census. The director districts shall be as nearly equal as practicable to the ideal population for the districts as determined by dividing the number of director districts to be established into the population of the school district. The director districts shall be composed of contiguous territory as compact as practicable.

2. If following a federal decennial census a school district fails to meet population equality requirements, the board of directors of the school district shall adopt a resolution redrawing the director districts not earlier than November 15 of the year immediately following the year in which the federal decennial census is taken nor later than May 30 of the second year immediately following the year in which the federal decennial census is taken. A copy of the adopted plan shall be filed with the area education agency administrator of the area education agency in which the school's electors reside.

3. The school board shall notify the state commissioner of elections and the county commissioner of elections of each county in which a portion of the school district is located whenever the boundaries of director districts are changed. The board shall provide the commissioners with maps showing the new boundaries. If, following a federal decennial census a school district elects not to redraw director districts under this section, the school board shall so certify to the state commissioner of elections, and the school board shall also certify to the state commissioner the populations of the retained director districts as determined

under the latest federal decennial census. Upon failure of a district board to make the required changes by the dates established under this section as determined by the state commissioner of elections, the state commissioner of elections shall make or cause to be made the necessary changes as soon as possible, and shall assess any expenses incurred to the school district. The state commissioner of elections may request the services of personnel of and materials available to the legislative service bureau to assist the state commissioner in making any required boundary changes.

4. If more than one incumbent director, whose term extends beyond the organizational meeting of the board of directors after the regular school election following the adoption of the redrawn districts, reside in a redrawn director district, the terms of office of the affected directors expire at the organizational meeting of the board of directors following the next regular school election.

5. The boundary changes under this section take effect July 1 following their adoption for the next regular school election.

6. Section 275.9 and sections 275.14 through 275.23 do not apply to changes in director district boundaries made under this section.

89 Acts, ch 296, §24 SF 141  
Subsection 3 amended

### **275.56 Increasing enrollment.**

If the enrollment of a school district increases or is expected to increase because an adjacent district has dissolved or is expected to dissolve, the board of directors of the school district shall determine whether there is a need to hire additional licensed or unlicensed employees. If the board of directors determines that there is a need to hire additional employees, the board shall determine the nature and number of the necessary new positions. Individuals who were employees of the dissolved district may apply for the new positions. The board shall hire those applicants who were employees of the dissolved district whenever the applicant is licensed for the new position or, in the case of unlicensed personnel, is otherwise qualified. If two employees of the dissolved district apply for a single licensed position, the applicant who is best qualified in the opinion of the board shall be hired. The board is not required to hire applicants who were employees of the dissolved district if the district has been dissolved for one or more school years. Applicants who are re-employed under this section shall maintain in the re-employing district vacation, salary or alternatively placement on a salary schedule based on the employee's years of experience, sick leave, and completion of probationary status as defined by section 279.19.

89 Acts, ch 265, §40 HF 794  
Section amended

### **275.59 Early retirement following school reorganization or dissolution.**

A licensed employee of a school district which reorganizes or dissolves under this chapter during the period beginning July 1, 1990, and ending June 30, 1992, is eligible to receive a retirement incentive as provided in this section. The retirement incentive is in addition to any retirement incentive provided by the board of directors of a school district under section 279.46. The licensed employee shall be between fifty-nine and sixty-five years of age at the time the reorganization or dissolution occurs. If the licensed employee is less than sixty-five years of age when the licensed employee terminates employment, the licensed employee is eligible to receive a retirement bonus which is a lump sum payment equal to ten percent of the final annual salary of the employee, not to exceed five thousand dollars. The board of directors of the school district shall notify the department of management of the names of employees eligible for payments under this section and shall submit other verification of employment required by the department of management. For the purposes of this section, "licensed employee" means an

administrator or teacher who possesses a license issued under chapter 260 and at the time of retirement is employed on a full-time basis by one or more school districts. The governor shall authorize payment from the salary adjustment fund for the retirement bonuses paid under this section. Section 8.39 does not apply to payments made from the salary adjustment fund under this section.

89 Acts, ch 265, §40 HF 794  
Section amended

## CHAPTER 277

### SCHOOL ELECTIONS

#### **277.2 Special election.**

The board of directors in a school corporation may call a special election at which the voters shall have the powers exercised at the regular election with reference to the sale of school property and the application to be made of the proceeds, the authorization of seven members on the board of directors, the authorization to establish or change the boundaries of director districts, and the authorization of a voter-approved physical plant and equipment levy or indebtedness, as provided by law.

89 Acts, ch 135, §70 HF 535  
1989 amendment takes effect July 1, 1990, for purpose of computations for school budget year beginning July 1, 1991;  
89 Acts, ch 135, §141 HF 535  
Section amended

#### **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-four 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. Signers of nomination petitions shall include their addresses and the date of signing, and must reside in the same district as the candidate if directors are elected by district, rather than at large. A person may sign nomination petitions for more than one candidate for the same office, and the signature is not invalid solely because the person signed nomination petitions for one or more other candidates for the office. The petition shall be filed with 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 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 secretary of the school board shall note upon each petition and affidavit accepted for filing the date and time that the petition was filed. The secretary of the school board shall deliver all nomination petitions, together with the complete text of any public measure being submitted by the board to the electorate, 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 secretary at any time prior to five o'clock p.m. on the thirty-fifth day before the election.

89 Acts, ch 136, §63 SF 371  
Unnumbered paragraph 1 amended and divided

## CHAPTER 278

### POWERS OF ELECTORS

Effectiveness of school tax levy approved before March 15, 1991; 89 Acts, ch 135, §125, 141 HF 525

#### 278.2 Submission of proposition.

The board may, and upon the written request of one hundred eligible electors or a number of electors which equals thirty percent of the number of votes cast in the last school board election, whichever number is greater, shall, direct the county commissioner of elections to provide in the notice of the regular election for the submission of any proposition authorized by law to the voters. When the board has directed the commissioner to submit to the voters a proposition authorized by section 278.1, subsection 8 or 9, it shall not thereafter direct the commissioner to submit at the same election any other proposition under either of these subsections.

Petitions filed under this section shall be filed with the secretary of the school board at least seventy-five days before the date of the annual school election, if the question is to be included on the ballot at that election. The petition shall include the signatures of the petitioners, a statement of their place of residence, and the date on which they signed the petition.

89 Acts, ch 30, §1 HF 418; 89 Acts, ch 136, §64 SF 371  
See Code editor's note to §22.7  
Section stricken and rewritten  
NEW unnumbered paragraph added

## CHAPTER 279

### DIRECTORS—POWERS AND DUTIES

#### 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 twenty-five days before the date set for the election.

89 Acts, ch 136, §65 SF 371  
Unnumbered paragraph 4 (last paragraph) amended

### **279.12 Contracts—teachers—insurance—educational leave.**

The board shall carry into effect any instruction from the regular election upon matters within the control of the voters, and shall elect all teachers and make all contracts necessary or proper for exercising the powers granted and performing the duties required by law, and may establish and pay all or any part thereof from school district funds the cost of group health insurance plans, nonprofit group hospital service plans, nonprofit group medical service plans and group life insurance plans adopted by the board for the benefit of employees of the school district, but the board may authorize any subdirector to employ teachers for the school in the subdirector's subdistrict; but no such employment by a subdirector shall authorize a contract, the entire period of which is wholly beyond the subdirector's term of office.

The board may approve a policy for educational leave for licensed school employees and for reimbursement for tuition paid by licensed school employees for courses approved by the board. For the purpose of this section "educational leave" means a leave granted to an employee for the purpose of study including study in areas outside of a teacher's area of specialization, travel, or other reasons deemed by the board to be of value to the school system.

89 Acts, ch 265, §40 HF 794  
Section amended

### **279.13 Contracts with teachers—automatic continuation.**

1. Contracts with teachers, which for the purpose of this section means all licensed employees of a school district and nurses employed by the board, excluding superintendents, assistant superintendents, principals, and assistant principals, shall be in writing and shall state the number of contract days, the annual compensation to be paid, and any other matters as may be mutually agreed upon. The contract may include employment for a term not exceeding the ensuing school year, except as otherwise authorized.

The contract is invalid if the teacher is under contract with another board of directors to teach during the same time period until a release from the other contract is achieved. The contract shall be signed by the president of the board when tendered, and after it is signed by the teacher, the contract shall be filed with the secretary of the board before the teacher enters into performance under the contract.

2. The contract shall remain in force and effect for the period stated in the contract and shall be automatically continued for equivalent periods except as modified or terminated by mutual agreement of the board of directors and the teacher or as terminated in accordance with the provisions specified in this chapter. A contract shall not be offered by the employing board to a teacher under its jurisdiction prior to March 15 of any year. A teacher who has not accepted a contract for the ensuing school year tendered by the employing board may resign effective at the end of the current school year by filing a written resignation with the secretary of the board. The resignation must be filed not later than the last day of the current school year or the date specified by the employing board for return of the contract, whichever date occurs first. However, a teacher shall not be required to return a contract to the board or to resign less than twenty-one days after the contract has been offered.

3. If the provisions of a contract executed or automatically renewed under this section conflict with a collective bargaining agreement negotiated under chapter 20 and effective when the contract is executed or renewed, the provisions of the collective bargaining agreement shall prevail.

89 Acts, ch 265, §40 HF 794  
Section amended

### **279.19A Extracurricular contracts.**

1. School districts employing individuals to coach interscholastic athletic sports shall issue a separate extracurricular contract for each of these sports. An

extracurricular contract offered under this section shall be separate from the contract issued under section 279.13. Wages for employees who coach these sports shall be paid pursuant to established or negotiated supplemental pay schedules. An extracurricular contract shall be in writing, and shall state the number of contract days for that sport, the annual compensation to be paid, and any other matters as may be mutually agreed upon. The contract shall be for a single school year.

2. An extracurricular contract shall be continued automatically in force and effect for equivalent periods, except as modified or terminated by mutual agreement of the board of directors and the employee, or terminated in accordance with this section. An extracurricular contract shall initially be offered by the employing board to an individual on the same date that contracts are offered to teachers under section 279.13. An extracurricular contract may be terminated at the end of a school year pursuant to sections 279.15 through 279.19. If the school district offers an extracurricular contract for a sport for the subsequent school year to an employee who is currently performing under an extracurricular contract for that sport, and the employee does not wish to accept the extracurricular contract for the subsequent year, the employee may resign from the extracurricular contract within twenty-one days after it has been received.

Section 279.13, subsection 3, applies to this section.

3. The board of directors of a school district may require an employee who has resigned from an extracurricular contract to accept, as a condition of employment under section 279.13, the extracurricular contract for the subsequent school year if all of the following conditions apply:

a. The employee has accepted a teaching contract issued by the board pursuant to section 279.13 for the subsequent school year.

b. The board of directors has made a good faith effort to fill the coaching position with a licensed or authorized replacement.

c. The position has not been filled by June 1 of the year in which the employee resigned the extracurricular contract.

4. As a condition of employment under section 279.13, the board of directors of a school district may require an employee who has been issued a teaching contract pursuant to section 279.13 to accept an extracurricular contract for which the employee is licensed, or may require as a condition of employment that an applicant for a teaching contract under section 279.13 accept an extracurricular contract if all of the following conditions apply:

a. The individual who held the coaching position during the year has not been issued a teaching contract by the board pursuant to section 279.13 for the subsequent school year, or has been terminated from the extracurricular contract.

b. The board of directors has made a good faith effort to fill the coaching position with a licensed or authorized replacement.

c. The position has not been filled by June 1 of the year in which the vacancy occurred for the interscholastic athletic sport.

5. Within seven days following June 1 of that year, the board shall notify the employee in writing if the board intends to require the employee to accept an extracurricular contract for the subsequent school year under subsection 3 or 4. If the employee believes that the board did not make a good faith effort to fill the position the employee may appeal the decision by notifying the board in writing within ten days after receiving the notification.

The appeal shall state why the employee believes that the board did not make a good faith effort to fill the position. If the parties are unable to informally resolve the dispute, the parties shall attempt to agree upon an alternative means of resolving the dispute.

If the dispute is not resolved by mutual agreement, either party may appeal to the district court.

6. Subsections 3, 4, and 5 do not apply if the terms of a collective bargaining agreement provide otherwise.

7. An extracurricular contract may be terminated prior to the expiration of that contract pursuant to section 279.27.

8. A termination proceeding of an extracurricular contract either by the board pursuant to subsection 2 or pursuant to section 279.27 does not affect a contract issued pursuant to section 279.13.

A termination of a contract entered into pursuant to section 279.13, or a resignation from that contract by the teacher, constitutes an automatic termination or resignation of the extracurricular contract in effect between the same teacher and the employing school board.

9. For the purposes of this section, "good faith effort" includes advertising for the position in an appropriate publication, interviewing applicants, and giving serious consideration to those licensed or authorized, and otherwise qualified, applicants who apply.

89 Acts, ch 265, §40 HF 794  
Section amended

### **279.19B Coaching endorsement and authorization.**

The board of directors of a school district shall offer an extracurricular contract for varsity head coach of the interscholastic athletic activities of football, basketball, track not including cross-country, baseball, softball, volleyball, gymnastics, hockey, and wrestling only to an individual possessing a teaching license with a coaching endorsement issued pursuant to chapter 260.

The board of directors of a school district may employ for head coach of other interscholastic athletic activities or for assistant coach of any interscholastic athletic activity, an individual who possesses a coaching authorization issued by the board of educational examiners. An individual who has been issued a coaching authorization or who possesses a teaching license with a coaching endorsement but is not issued a teaching contract under section 279.13 and who is employed by the board of directors of a school district serves at the pleasure of the board of directors and is not subject to sections 279.13 through 279.19, and 279.27. Subsection 1 of section 279.19A applies to coaching authorizations.

89 Acts, ch 265, §35, 42 HF 794  
Section amended

### **279.26 Lease arrangements.**

The board of directors of a local school district for which a voter-approved physical plant and equipment levy has been voted pursuant to section 298.2, may enter into a rental or lease arrangement, consistent with the purposes for which the voter-approved physical plant and equipment levy has been voted, for a period not exceeding ten years and not exceeding the period for which the voter-approved physical plant and equipment levy has been authorized by the voters.

89 Acts, ch 135, §73 HF 535  
1989 amendments take effect July 1, 1990, for purpose of computations for school budget year beginning July 1, 1991;  
89 Acts, ch 135, §141 HF 535  
Section amended

### **279.28 Insurance—supplies—textbooks.**

The board of directors may provide and pay out of the general fund to insure school property a sum as necessary, and may purchase dictionaries, library books, including books for the purpose of teaching vocal music, maps, charts, and apparatus for the use of the schools as deemed necessary by the board of directors for each school building under its charge; and may furnish schoolbooks to indigent children when they are likely to be deprived of the proper benefits of the school unless so aided.

89 Acts, ch 83, §38 SF 112  
Section amended

### 279.38 Membership in association of school boards.

Boards of directors of school corporations may pay, out of funds available to them, reasonable annual dues to the Iowa association of school boards. The financial condition and transactions of the Iowa association of school boards shall be audited in the same manner as school corporations as provided in section 11.6. In addition, annually the Iowa association of school boards shall publish a listing of the school districts and the annual dues paid by each and shall publish an accounting of all moneys expended for expenses incurred by and salaries paid to legislative representatives and lobbyists of the association.

Membership in such an Iowa association of school boards shall be limited to those duly elected members of the boards of directors of local school corporations.

89 Acts, ch 264, §7 HF 451  
Unnumbered paragraph 1 amended

### 279.45 Administrative expenditures.

For the budget year beginning July 1, 1989, and each of the following three budget years, the board of directors of a school district in which the administrative expenditures as a percent of the school district's operating fund for a base year exceed five percent, shall reduce its administrative expenditures so that they are one-half percent less as a percent of the school district's operating fund than they were for the base year. However, a school district is not required to reduce its administrative expenditures below five percent of its operating fund. Thereafter, a school district shall not increase the percent of its administrative expenditures compared to its operating fund. Annually, the board of directors shall certify to the department of education the amounts of the school district's administrative expenditures and its operating fund. For the purposes of this section, "base year" and "budget year" mean the same as defined in section 442.6, Code 1989, and section 257.2, and "administrative expenditures" means expenditures for executive administration.

89 Acts, ch 135, §74 HF 535  
1989 amendment takes effect July 1, 1990, for purpose of computations for school budget year beginning July 1, 1991;  
89 Acts, ch 135, §141 HF 535  
Section amended

### 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 include in the district management levy an amount to pay the costs of the program provided in this section.

89 Acts, ch 135, §75 HF 535  
1989 amendments take effect July 1, 1990, for purpose of computations for school budget year beginning July 1, 1991;  
89 Acts, ch 135, §141 HF 535  
Section amended

### 279.49 Child day care programs.

The board of directors of a school corporation may operate or contract for the operation of a program to provide child day care to children not enrolled in school or to students enrolled in kindergarten through grade six before and after school, or to both. The person employed to be responsible for coordinating a program operated by a board shall be an appropriately licensed teacher under chapter 260

or the program operated by contract with the board shall be licensed as a child care center under chapter 237A. The board shall require the employment of adequate personnel for a program to meet the personnel standards adopted by the department of human services pursuant to section 237A.12, subsection 1.

The board shall establish a fee for the cost of participation in a program. The parent or guardian of a child participating in a program is responsible for payment of the fee and for transportation of the child. The fee shall cover staffing costs and other necessary expenses as deemed appropriate by the board.

89 Acts, ch 265, §40 HF 794

Goals for early childhood education; 89 Acts, ch 206, §1 SF 223

Committee of local boards to report to state board of education by October 1, 1990, regarding establishment of child care programs and curricula; 89 Acts, ch 206, §11 SF 223

For amendment which takes effect January 1, 1992, see 89 Acts, ch 206, §10, 13 SF 223

Section amended

### **279.51 Programs for at-risk children.**

1. There is appropriated from the general fund of the state to the department of education for the fiscal year beginning July 1, 1990, the sum of eight million seven hundred thousand dollars. For the fiscal year beginning July 1, 1991, and each succeeding fiscal year, there is appropriated the sum of eleven million two hundred thousand dollars plus an additional amount equal to the state percent of growth as calculated in section 257.8 multiplied by the amount appropriated the previous fiscal year.

The moneys shall be allocated as follows:

a. Two hundred seventy-five thousand dollars of the funds appropriated shall be allocated to the area education agencies to assist school districts in developing program plans and budgets under this section and to assist school districts in meeting other responsibilities in early childhood education.

b. For the fiscal year beginning July 1, 1990, four million six hundred twenty-five thousand dollars, and for each fiscal year thereafter, six million one hundred twenty-five thousand dollars of the funds appropriated shall be allocated to the child development coordinating council established in chapter 256A for the purposes set out in subsection 2 of this section and section 256A.3.

c. For each of the fiscal years during the fiscal period beginning July 1, 1990, and ending June 30, 1994, eight hundred thousand dollars of the funds appropriated shall be allocated for the school-based youth services education program established in subsection 3. Subject to the approval of the state board of education, the allocation made in this paragraph may be renewed for additional four-year periods of time.

d. For the fiscal year beginning July 1, 1990, three million dollars, and for each fiscal year thereafter, four million dollars of the funds appropriated shall be allocated as grants to school districts that have elementary schools that demonstrate the greatest need for programs for at-risk students with preference given to innovative programs for the early elementary school years.

e. Additional funds available under this subsection as a result of additional growth provided to the appropriation in subsection 1 shall be distributed equally between paragraphs "b" and "d".

f. Not later than January 15, 1991, the department of education shall submit a report to the general assembly listing the moneys allocated under each of the paragraphs of this section and anticipated funding needed for the remainder of the fiscal year for each of those paragraphs. If the moneys appropriated under this section are insufficient to fund the grants under paragraphs "b" and "d", the department of education shall certify that information in the report and it is the intent of the general assembly that moneys shall be appropriated for the fiscal year beginning July 1, 1990, to supplement the appropriation in this section in an amount sufficient to fund grants under paragraphs "b" and "d", but not greater than two million five hundred thousand dollars.

2. Funds allocated under subsection 1, paragraph "b", shall be used by the child development coordinating council for the following:

a. To continue funding for programs previously funded by grants awarded under section 256A.3 and to provide additional grants under section 256A.3. The council shall seek to provide grants on the basis of the location within the state of children meeting at-risk definitions.

b. At the discretion of the child development coordinating council, award grants for the following:

(1) To school districts to establish programs for three-year, four-year, and five-year old at-risk children which are a combination of preschool and full-day kindergarten.

(2) To provide grants to provide educational support services to parents of at-risk children age birth through three years.

3. A school-based youth services education program is established. The department of education, in consultation with the department of human services, the department of employment services, the Iowa department of public health, and the division of job training and entrepreneurship assistance of the department of economic development, shall develop a four-year demonstration grant program that commences in the fiscal year beginning July 1, 1990. The department shall provide grants to individual middle schools or high schools to establish school-based youth services programs based upon program plans filed by the board of directors of the school district. Priority shall be given to schools with student populations characterized by high rates of a number of the following: school dropout and absenteeism; teenage pregnancy; juvenile court involvement; unemployment; teenage suicide; and teenage mental health, substance abuse, and other health problems. The department shall evaluate proposed programs based upon the department's analysis of effectiveness in reducing these rates within the schools.

Additional objectives of the programs shall be: to increase the ability of existing agencies within the community to address the multiple problems of teenagers and to coordinate their activities, to provide an accessible and attractive center for teenagers in or near school that they are most likely to use, and to facilitate joint planning to make the most economic and innovative use of community resources. Programs shall at a minimum provide job training and employment services, mental health and family counseling services, and primary health care services that include but are not limited to physical examinations, immunizations, hearing and vision screening, and preventive and primary health care services, in the context of the educational needs of the students. Programs shall not include abortion counseling or the dispensing of contraceptives. The department shall give additional consideration to program proposals that provide access to the center after school, in the evening and on weekends, and during the summer; that provide a twenty-four hour telephone hotline or similar service; and that provide access to day care or on-site day care.

The plan shall include the appointment by the board of a local advisory board for each proposed program, which at a minimum shall include a representative of the private industry council serving the area, parents of children enrolled in the school, a teacher recommended by the local teachers association, a representative from the health and mental health community in the area, teenagers enrolled in the school and recommended by the school student government, a representative from the nonprofit provider community, and a representative from the juvenile court system serving the area. Management of the program shall be by the school or by a nonprofit youth service organization. As used in this subsection, "youth service" means recreational services, employment services, civic services, or juvenile treatment services.

Program proposals shall include a written commitment from the school principal and the board of directors that the school will work to coordinate and integrate existing school services and activities with the center and shall include letters of support for the proposal from the local teachers association; parent-teacher organizations; community organizations; nonprofit agencies providing social services, health, or employment services in the area; and the area private industry council.

Grants for the program shall not be used to construct a new facility, but up to ten percent of the grant may be used to renovate an existing structure. In addition, up to ten percent of the grant funds may be used to provide each of the following service categories: day care, transportation, and recreation.

Program proposals shall include a contribution of at least twenty percent of the total costs of the program, which can include "in-kind" services. Partnerships between the public and private sectors to provide employment and training opportunities for youth served by the program are particularly encouraged. The budget for a proposed program shall not exceed two hundred thousand dollars per year.

4. The department shall seek assistance from the first in the nation in education foundation established in chapter 257A and other foundations and public and private agencies in the evaluation of the programs funded under this section, and in the provision of support to school districts in developing and implementing the programs funded under this section.

5. The state board of education shall adopt rules under chapter 17A for the administration of this section.

89 Acts, ch 135, §76 HF 535  
Effective July 1, 1990; 89 Acts, ch 135, §140 HF 535  
NEW section

### **279.52 Optional funding of asbestos projects.**

The board of directors may pay the actual cost of an asbestos project from any funds in the general fund of the district, funds received from the physical plant and equipment levy, funds received from the additional enrichment amount for an asbestos project in section 279.53, or moneys obtained through a federal asbestos loan program, to be repaid from any of the funds specified in this subsection over a three-year period.

For the purpose of this section, "*cost of an asbestos project*" includes the costs of inspection and reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, developing of management plans and recordkeeping requirements relating to the presence of asbestos in school buildings of the district and its removal or encapsulation.

89 Acts, ch 135, §77 HF 535  
Effective July 1, 1990, for purpose of computations for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535  
NEW section

### **279.53 Additional enrichment amount for asbestos projects.**

1. A school board may raise an additional enrichment amount for purposes of funding an asbestos project under section 279.52 as provided in this section.

2. The board shall determine the additional enrichment amount needed for an asbestos project, 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 279.54 for a period not exceeding five years, 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 or February 15, 1995, whichever is earlier. Only one election on the question shall be held during a twelve-month period. If a majority of those voting on the question favors raising the additional enrichment amount for an asbestos project, the board may include the approved amount in its certified budget.

3. The additional enrichment amount needed for an asbestos project shall be raised within the limits provided in this section by an enrichment property tax or by a combination of an enrichment property tax and a school district income surtax. The method of raising the additional enrichment amount shall be determined by the board. Subject to the limitation in section 298.14, if the board uses a combination of an enrichment property tax and a school district income surtax, for each fiscal year the board shall determine the percent of income surtax to be expressed as full percentage points, not to exceed twenty percent.

89 Acts, ch 135, §78 HF 535

Effective July 1, 1990, for purpose of computations for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535

NEW section

#### **279.54 School district income surtax.**

If a majority of those voting in an election approves raising the additional enrichment amount for an asbestos project under section 279.53 and this section, not later than March 15 of the previous school year the board shall certify to the department of management that the required procedures have been carried out, the method of funding the amount to be raised, and the department of management shall establish the amount of additional enrichment property tax to be levied or the amount of the combination of the enrichment property tax and the amount of enrichment income surtax to be imposed for each school year for which the additional enrichment amount for an asbestos project is authorized. The enrichment property tax and income surtax, if an income surtax is imposed, shall be levied and imposed, collected, and paid to the school district in the manner provided for the instructional support program in sections 257.21 through 257.26.

Moneys received are miscellaneous income for purposes of chapter 257.

89 Acts, ch 135, §79 HF 535

Effective July 1, 1990, for purpose of computations for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535

Limit on total surtax, §298.14

NEW section

## CHAPTER 280

### UNIFORM SCHOOL REQUIREMENTS

#### **280.3 Duties of board.**

The board of directors of each public school district and the authorities in charge of each nonpublic school shall prescribe the minimum educational program for the schools under their jurisdictions. The minimum educational program shall be the curriculum set forth in section 256.11, except as otherwise provided by law. The board of directors of a public school district shall not allow discrimination in any educational program on the basis of race, color, creed, sex, marital status or place of national origin.

A nonpublic school which is unable to meet the minimum educational program may request an exemption from the state board of education. The authorities in charge of the nonpublic school shall file with the director of the department of education the names and locations of all schools desiring to be exempted and the names, ages, and post office addresses of all pupils of compulsory school age who are enrolled. The director, subject to the approval of the state board, may exempt the nonpublic school from compliance with the minimum educational program for two school years. When the exemption has once been granted, renewal of the exemption for each succeeding school year may be conditioned by the director, with the approval of the board, upon proof of achievement in the basic skills of arithmetic, the communicative arts of reading, writing, grammar, and spelling, and an understanding of United States history, history of Iowa, and the principles

of American government, of the pupils of compulsory school age exempted in the preceding year. Proof of achievement shall be determined on the basis of tests or other means of evaluation prescribed by the director of the department of education with the approval of the state board of education. The testing or evaluation, if required, shall be accomplished prior to submission of the request for renewal of the exemption. Renewal requests shall be filed with the director by April 15 of the school year preceding the school year for which the applicants desire exemption. This section shall not apply to schools eligible for exemption under section 299.24.

The board of directors of each public school district and the authorities in charge of each nonpublic school shall establish and maintain attendance centers based upon the needs of the school age pupils enrolled in the school district or nonpublic school. Public school kindergarten programs shall and public and nonpublic school prekindergarten programs may be provided. In addition, the board of directors or governing authority may include in the educational program of any school such additional courses, subjects, or activities which it deems fit the needs of the pupils.

89 Acts, ch 210, §7 SF 450

Unnumbered paragraph 3 (last paragraph) amended

#### **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 that shall be included in the weighted enrollment of the school district of

residence for a period not exceeding three years. However, the school budget review committee may grant supplemental aid or modified allowable growth, to a school district to continue funding a program for students after the expiration of the three-year period. The school budget review committee shall calculate the additional amount for the weighting to the nearest one-hundredth of one so that, to the extent possible, the moneys generated by the weighting will be equivalent to the moneys generated by the two-tenths weighting provided prior to July 1, 1991.

89 Acts, ch 135, §80 HF 535

1989 amendments to subsection 4 take effect July 1, 1990, for purposes of computations for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535

Subsection 4 amended

### **280.21 Corporal punishment.**

An employee of an accredited public school district, accredited nonpublic school, or area education agency shall not inflict, or cause to be inflicted, corporal punishment upon a student. For purposes of this section, "*corporal punishment*" means the intentional physical punishment of a student. An employee's physical contact with the body of a student is justified if it is reasonable and necessary under the circumstances and is not designed or intended to cause pain or if the employee uses reasonable force, as defined under section 704.1, for the protection of the employee, the student, or other students; to obtain the possession of a weapon or other dangerous object within a student's control; or for the protection of property.

89 Acts, ch 71, §1 SF 52

NEW section

### **280.22 Student exercise of free expression.**

1. Except as limited by this section, students of the public schools have the right to exercise freedom of speech, including the right of expression in official school publications.
2. Students shall not express, publish, or distribute any of the following:
  - a. Materials which are obscene.
  - b. Materials which are libelous or slanderous under chapter 659.
  - c. Materials which encourage students to do any of the following:
    - (1) Commit unlawful acts.
    - (2) Violate lawful school regulations.
    - (3) Cause the material and substantial disruption of the orderly operation of the school.
3. There shall be no prior restraint of material prepared for official school publications except when the material violates this section.
4. Each board of directors of a public school shall adopt rules in the form of a written publications code, which shall include reasonable provisions for the time, place, and manner of conducting such activities within its jurisdiction. The board shall make the code available to the students and their parents.
5. Student editors of official school publications shall assign and edit the news, editorial, and feature content of their publications subject to the limitations of this section. Journalism advisers of students producing official school publications shall supervise the production of the student staff, to maintain professional standards of English and journalism, and to comply with this section.
6. Any expression made by students in the exercise of free speech, including student expression in official school publications, shall not be deemed to be an expression of school policy, and the public school district and school employees or officials shall not be liable in any civil or criminal action for any student expression made or published by students, unless the school employees or officials have interfered with or altered the content of the student speech or expression,

and then only to the extent of the interference or alteration of the speech or expression.

7. "Official school publications" means material produced by students in the journalism, newspaper, yearbook, or writing classes and distributed to the student body either free or for a fee.

8. This section does not prohibit a board of directors of a public school from adopting otherwise valid rules relating to oral communications by students upon the premises of each school.

89 Acts, ch 155, §1 SF 224  
NEW section

## CHAPTER 280A

### AREA VOCATIONAL SCHOOLS AND COMMUNITY COLLEGES

For amendment to §280A.23(1), effective July 1, 1992, see 89 Acts, ch 278, §6 SF 449

#### 280A.11 Governing board.

The governing board of a merged area is a board of directors composed of one member elected from each director district in the area by the electors of the respective district. Members of the board shall be residents of the district from which elected. Successors shall be chosen at the annual school elections for members whose terms expire. The term of a member of the board of directors is three years and commences at the organization meeting. Vacancies on the board shall be filled at the next regular meeting of the board by appointment by the remaining members of the board. A member so chosen shall be a resident of the district in which the vacancy occurred and shall serve until a member is elected pursuant to section 69.12 to fill the vacancy for the balance of the unexpired term. A vacancy is defined in section 277.29. A member shall not serve on the board of directors who is a member of a board of directors of a local school district or a member of an area education agency board.

Commencing with the regular school election in 1981, the governing board of a merged area shall consist of not less than five nor more than nine members.

Director districts shall be of approximately equal population within each merged area.

89 Acts, ch 136, §66 SF 371  
Unnumbered paragraph 1 amended

#### 280A.15 Conduct of elections.

1. Regular elections held annually by the merged area for the election of members of the board of directors as required by section 280A.11, for the renewal of the twenty and one-fourth cents per thousand dollars of assessed valuation levy authorized in section 280A.22, or for any other matter authorized by law and designated for election by the board of directors of the merged area, shall be held on the date of the school election as fixed by section 277.1. The election notice shall be made a part of the local school election notice published as provided in section 49.53 in each local school district where voting is to occur in the merged area election and the election shall be conducted by the county commissioner of elections pursuant to chapters 39 to 53 and section 277.20.

2. A candidate for member of the board of directors of a merged area shall be nominated by a petition signed by not less than fifty eligible electors of the director district from which the member is to be elected. The petition shall state the number of the director district from which the candidate seeks election, and the candidate's name and status as an eligible elector of the director district. Signers of the petition, in addition to signing their names, shall show their

residence, including street and number if any, the school district in which they reside, and the date they signed the petition. A person may sign nomination petitions for more than one candidate for the same office, and the signature is not invalid solely because the person signed nomination petitions for one or more other candidates for the office. The petition shall include the affidavit of the candidate being nominated, stating the candidate's name and residence, and that the individual is a candidate, is eligible for the office sought, and if elected will qualify for the office.

3. Nomination papers in behalf of candidates for member of the board of directors of a merged area shall be filed with the secretary of the board not earlier than sixty-five days nor later than five o'clock p.m. on the fortieth day prior to the election at which members of the board are to be elected. The secretary shall deliver all nomination petitions so filed, together with the text of any public measure being submitted by the board of directors to the electorate, to the county commissioner of elections who is responsible under section 47.2 for conducting elections held for the merged area, not later than five o'clock p.m. on the day following the last day on which nomination petitions can be filed. That commissioner shall certify the names of candidates, and the text and summary of any public measure being submitted to the electorate, to all county commissioners of elections in the merged area by the thirty-fifth day prior to the election.

4. The votes cast in the election shall be canvassed and abstracts of the votes cast shall be certified as required by section 277.20. In each county whose commissioner of elections is responsible under section 47.2 for conducting elections held for a merged area, the county board of supervisors shall convene at ten o'clock a.m. on the last Monday in September, canvass the abstracts of votes cast and declare the results of the voting. The commissioner shall at once issue certificates of election to each person declared elected, and shall certify to the merged area board in substantially the manner prescribed by section 50.27 the result of the voting on any public question submitted to the voters of the merged area. Members elected to the board of directors of a merged area shall qualify by taking the oath of office prescribed in section 277.28.

89 Acts, ch 136, §67 SF 371  
Subsection 2 amended

## CHAPTER 281

### EDUCATION OF CHILDREN REQUIRING SPECIAL EDUCATION

#### 281.2 Definitions—policies—funds.

1. "*Children requiring special education*" means persons under twenty-one years of age, including children under five years of age, who are handicapped in obtaining an education because of physical, mental, communication or learning disabilities or who are behaviorally disordered, as defined by the rules of the department of education.

2. "*Special education*" means classroom, home, hospital, institutional, or other instruction designed to meet the needs of children requiring special education as defined in subsection 1; transportation and corrective and supporting services required to assist children requiring special education, as defined in subsection 1, in taking advantage of, or responding to, educational programs and opportunities, as defined by rules of the state board of education.

3. It is the policy of this state to require school districts and state operated educational programs to provide or make provision, as an integral part of public

education, for a free and appropriate public education sufficient to meet the needs of all children requiring special education. This chapter is not to be construed as encouraging separate facilities or segregated programs designed to meet the needs of children requiring special education when the children can benefit from all or part of the education program as offered by the local school district. To the maximum extent possible, children requiring special education shall attend regular classes and shall be educated with children who do not require special education. Whenever possible, hindrances to learning and to the normal functioning of children requiring special education within the regular school environment shall be overcome by the provision of special aids and services rather than by separate programs for those in need of special education. Special classes, separate schooling or other removal of children requiring special education from the regular educational environment, shall occur only when, and to the extent that the nature or severity of the educational handicap is such that education in regular classes, even with the use of supplementary aids and services, cannot be accomplished satisfactorily. For those children who cannot adapt to the regular educational or home living conditions, and who are attending facilities under chapters 263, 269 and 270, upon the request of the board of directors of an area education agency, the department of human services shall provide residential or detention facilities and the area education agency shall provide special education programs and services. The area education agencies shall co-operate with the board of regents to provide the services required by this Act.\*

Special aids and services shall be provided to children requiring special education who are less than five years of age if the aids and services will reasonably permit the child to enter the educational process or school environment when the child attains school age.

Every child requiring special education shall, if reasonably possible, receive a level of education commensurate with the level provided each child who does not require special education. The cost of providing such an education shall be paid as provided in section 273.9, this chapter and chapter 442. It shall be the primary responsibility of each school district to provide special education to children who reside in that district if the children requiring special education are properly identified, the educational program or service has been approved, the teacher or instructor has been licensed, the number of children requiring special education needing that educational program or service is sufficient to make offering the program or service feasible, and the program or service cannot more economically and equably be obtained from the area education agency, another school district, another group of school districts, a qualified private agency, or in co-operation with one or more other districts.

4. Any funds received by the school district of the child's residence for the child's education, derived from funds received through chapter 442, this chapter and section 273.9 shall be paid by the school district of the child's residence to the appropriate education agency, private agency, or other school district providing special education for the child pursuant to contractual arrangements as provided in section 273.3, subsections 5 and 7.

89 Acts, ch 265, §41 HF 794

\*See 65GA, ch 1172

Section amended

### **281.9 Weighting plan—audits—evaluations—expenditures.**

1. In order to provide funds for the excess costs of instruction of children requiring special education, above the costs of instruction of pupils in a regular curriculum, a special education weighting plan for determining enrollment in each school district is adopted as follows:

- a. Pupils in a regular curriculum are assigned a weighting of one.

b. Children requiring special education who require special adaptations while assigned to a regular classroom for basic instructional purposes and handicapped pupils placed in a special education class who receive part of their instruction in regular classrooms are assigned a weighting of one and eight-tenths for the school year commencing July 1, 1975.

c. Children requiring special education who require full-time, self-contained special education placement with little integration into a regular classroom are assigned a weighting of two and two-tenths for the school year commencing July 1, 1975.

d. Children requiring special education who are severely handicapped or who have multiple handicaps are assigned a weighting of four and four-tenths for the school year commencing July 1, 1975.

e. Shared-time and part-time pupils of school age who require special education shall be placed in the proper category and counted in the proportion that the time for which they are enrolled or receive instruction for the school year bears to the time that full-time pupils, carrying a normal course schedule, in the same school district, for the same school year are enrolled and receive instruction.

2. The weighting for each category of child multiplied by the number of children in each category in the enrollment of a school district, as identified and certified by the director of special education for the area, determines the weighted enrollment to be used in that district for purposes of computations required under the state school foundation plan in chapter 257.

3. The weight that a child is assigned under this section shall be dependent upon the required educational modifications necessary to meet the special education needs of the child. Enrollment for the purpose of this section, and all payments to be made pursuant thereto, includes all children for whom a special education program or course is to be provided pursuant to sections 273.1 to 273.9 and this chapter, whether or not the children are actually enrolled upon the records of a school district.

4. On December 1, 1987, and no later than December 1 every two years thereafter, for the school year commencing the following July 1, the director of the department of education shall report to the school budget review committee the average costs of providing instruction for children requiring special education in the categories of the weighting plan established under this section, and the director of the department of education shall make recommendations to the school budget review committee for needed alterations to make the weighting plan suitable for subsequent school years. The school budget review committee shall establish the weighting plan for each school year after the school year commencing July 1, 1987, and shall report the plan to the director of the department of education. Commencing December 1, 1990, the school budget review committee may establish weights to the nearest hundredth. The school budget review committee shall not alter the weighting assigned to pupils in a regular curriculum, but it may increase or decrease the weighting assigned to each category of children requiring special education by not more than two-tenths of the weighting assigned to pupils in a regular curriculum. The state board of education shall adopt rules under chapter 17A, to implement the weighting plan for each year and to assist in identification and proper indexing of each child in the state who requires special education.

5. The division of special education shall audit the reports required in section 273.5 to determine that all children in the area who have been identified as requiring special education have received the appropriate special education instructional and support services, and to verify the proper identification of pupils in the area who will require special education instructional services during the school year in which the report is filed. The division shall certify to the director of the department of management the correct total enrollment of each school

district in the state, determined by applying the appropriate pupil weighting index to each child requiring special education, as certified by the directors of special education in each area.

6. The division may conduct an evaluation of the special education instructional program or special education support services being provided by an area education agency, school district, or private agency, pursuant to sections 273.1 to 273.9 and this chapter, to determine if the program or service is adequate and proper to meet the needs of the child; if the child is benefiting from the program or service; if the costs are in proportion to the educational benefits being received; and if there are any improvements that can be made in the program or service. A written report of the evaluation shall be sent to the area education agency, school district, or private agency evaluated and to the president of the senate and speaker of the house of representatives of the general assembly.

7. The costs of special education instructional programs include the costs of purchase of transportation equipment to meet the special needs of children requiring special education with the approval of the director of the department of education. The state board of education shall adopt rules under chapter 17A for the purchase of transportation equipment pursuant to this section.

8. Commencing with the school year beginning July 1, 1976, a school district may expend an amount not to exceed two-sevenths of an amount equal to the district cost of a school district for the costs of regular classroom instruction of a child certified under the special education weighting plan in subsection 1, paragraph "b", as a handicapped pupil who is enrolled in a special class, but who receives part of the pupil's instruction in a regular classroom. Unencumbered funds generated for special education instructional programs for the school year beginning July 1, 1975 and for the school year beginning July 1, 1976 shall not be expended for such purpose.

9. Funds generated for special education instructional programs under this chapter and chapter 257 shall not be expended for modifications of school buildings to make them accessible to children requiring special education.

89 Acts, ch 135, §84 HF 535

Applicability of subsection 4 to budget year beginning July 1, 1991; limit on increase or decrease in weighting does not apply; 89 Acts, ch 135, §50 HF 535

1989 amendments to subsections 2, 4, and 9 take effect July 1, 1990, for purpose of computations for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535

Subsections 2, 4, and 9 amended

### **281.15 Reimbursement for special education services.**

1. The state board of education in conjunction with the department of education shall develop a program to utilize federally funded health care programs, except the federal medically needy program for individuals who have a spend-down, to share in the costs of services which are provided to children requiring special education.

2. The department of education shall designate an area education agency to develop a system for collecting the information necessary to implement procedures for billing and collecting the costs of the services. The area education agency shall begin to develop the system immediately. The area education agency shall consult with and work jointly with state agencies and federal agencies to determine procedures and standards which shall be initiated by all area education agencies to qualify for receipt of benefits under federal programs.

3. The department of education, in conjunction with the area education agency, shall determine those specific services which are covered by federally funded health care programs, which shall include, but not be limited to, physical therapy, audiology, speech language therapy, and psychological evaluations. The department shall also determine which other special services may be subject to reimbursement and the qualifications necessary for personnel providing those

services. If it is determined that services are required from other service providers, these providers shall be reimbursed for those services.

4. All services referred to in subsection 1 shall be initially funded by the area education agency and shall be provided regardless of subsequent subrogation collections. The area education agency shall make a claim for reimbursement to federally funded health care programs.

5. Not later than July 1, 1988, the area education agency designated by the department of education shall have developed the program for collecting for the services provided. The program shall be distributed to all of the area education agencies in the state. All area education agencies shall begin collecting the information on July 1, 1988.

6. Effective November 1, 1988, all area education agencies in the state shall participate in the program and begin billing for and collecting for the covered services and shall bill for services provided retroactive to July 1, 1988. Retroactive Title XIX billing is contingent upon state plan approval. Nothing contained in this section shall be construed to allow nonlicensed individuals to perform services which otherwise require licenses under the laws of this state or to allow licensed providers to perform services outside their scope of practice.

7. All reimbursements received by the area education agencies for eligible services shall be paid annually to the treasurer of state. The treasurer of state shall credit all receipts received under this subsection to the general fund of the state.

8. Students or their parents or guardians covered by a federal health care program shall provide health care information to an area education agency or local school district.

9. The department of education and the department of human services shall adopt rules to implement this section to be effective immediately upon filing with the administrative rules coordinator, or at a stated date prior to indexing and publication, or at a stated date less than thirty-five days after filing, indexing, and publication.

89 Acts, ch 296, §25 SF 141

Subsection 8 stricken and subsequent subsections renumbered as 8 and 9

## CHAPTER 282

### SCHOOL ATTENDANCE AND TUITION

#### 282.1 School age—nonresidents.

Persons between five and twenty-one years of age are of school age. A board may establish and maintain evening schools for residents of the corporation regardless of age and for which no tuition need be charged. Nonresident children shall be charged the maximum tuition rate as determined in section 282.24, subsection 1, with the exception that those residing temporarily in a school corporation may attend school in the corporation upon terms prescribed by the board, and boards discontinuing grades under section 282.7, subsection 1 or subsections 1 and 3, shall be charged tuition as provided in section 282.24, subsection 2.

For purposes of this section, "*resident*" means a child who is physically present in a district, whose residence has not been established in another district by operation of law, and who meets any of the following conditions:

1. Is in the district for the purpose of making a home and not solely for school purposes.
2. Meets the definitional requirements of the term "*homeless individual*" under 42 U.S.C. §11302(a) and (c).

3. Lives in a juvenile detention center, foster care facility, or residential facility in the district.

89 Acts, ch 210, §8 SF 450  
NEW unnumbered paragraph 2 and subsections 1-3

### **282.3 Admission and exclusion of pupils.**

1. The board may exclude from school children under the age of six years when in its judgment such children are not sufficiently mature to be benefited by regular instruction, or any child who is found to be physically or mentally unable to attend school under section 299.5, or whose presence in school has been found to be injurious to the health of other pupils, or is inefficiently taught for the scholastic year at a state institution. However, the board shall provide special education programs and services under the provisions of chapters 273, 281, and 442 for all children requiring special education.

2. The conditions of admission to public schools for work in the year immediately preceding the first grade and in the first grade shall be as follows:

A child under the age of six years on the fifteenth of September of the current school year shall not be admitted to a public school unless the board of directors of the school has adopted and put into effect courses of study for the school year immediately preceding the first grade, approved by the department of education, and has employed a practitioner or practitioners for this work with standards of training approved by the board of educational examiners.

No child shall be admitted to school work for the year immediately preceding the first grade unless the child is five years of age on or before the fifteenth of September of the current school year.

No child shall be admitted to the first grade unless the child is six years of age on or before the fifteenth of September of the current school year; except that a child under six years of age who has been admitted to school work for the year immediately preceding the first grade under conditions approved by the department of education, or who has demonstrated the possession of sufficient ability to profit by first-grade work on the basis of tests or other means of evaluation recommended or approved by the department of education, may be admitted to first grade at any time before December 31.

3. Nothing herein provided shall prohibit a school board from requiring the attainment of a greater age than the age requirements herein set forth.

89 Acts, ch 210, §9 SF 450; 89 Acts, ch 265, §36 HF 794  
For amendment effective July 1, 1991, see 89 Acts, ch 135, §85 HF 535  
Subsection 1 amended  
Subsection 2, unnumbered paragraph 2 amended

### **282.4 Expulsion—dismissal.**

The board may, by a majority vote, expel any pupil from school for a violation of the regulations or rules established by the board, or when the presence of the pupil is detrimental to the best interests of the school; and it may confer upon any teacher, principal, or superintendent the power temporarily to dismiss a pupil, notice of such dismissal being at once given in writing to the president of the board.

89 Acts, ch 210, §10 SF 450  
Section amended

### **282.6 Tuition.**

Every school shall be free of tuition to all actual residents between the ages of five and twenty-one years and to resident honorably discharged soldiers, sailors, and marines, as many months after becoming twenty-one years of age as they have spent in the military or naval service of the United States before they became twenty-one, provided, however, fees may be charged covering instructional costs for a summer school program. The board of education may, in a hardship case, exempt a student from payment of the above fees. Every person, however, who

shall attend any school after graduation from a four-year course in an approved high school or its equivalent shall be charged a sufficient tuition fee to cover the cost of the instruction received by such person.

This section shall not apply to tuition authorized by chapter 280A.

For purposes of this section, "resident" means a person who is physically present in a district, whose residence has not been established in another district by operation of law, and who meets any of the following conditions:

1. Is in the district for the purpose of making a home and not solely for school purposes.
2. Meets the definitional requirements of the term "homeless individual" under 42 U.S.C. §11302(a) and (c).
3. Lives in a residential correctional facility in the district.

89 Acts, ch 210, §11 SF 450

NEW unnumbered paragraph 3 and subsections 1-3

### **282.18 Open enrollment.**

For the school year commencing July 1, 1989, and each succeeding school year, a parent or guardian residing in a school district may enroll the parent's or guardian's child in a public school in another school district in the manner provided in this section.

By September 15 of the preceding school year the parent or guardian shall informally notify the district of residence, and not later than November 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 another school district. The parent or guardian shall describe the reason that exists for enrollment in the receiving district that is not present in the district of residence. The board of the district of residence shall transmit a copy of the form to the receiving school district within five days after its receipt. During the 1990-1991 school year, if the board of the district of residence determines that transmission of the request will result in a loss of greater than five percent of the district's certified enrollment for the previous year, the board of the district of residence may deny the request for the 1990-1991 school year. During the 1991-1992 school year, if the board of the district of residence determines that transmission of the request will result in a loss of greater than ten percent of the district's certified enrollment for the previous year, the board of the district of residence may deny the request for the 1991-1992 school year. If, however, a failure to transmit a request will result in enrollment of students from the same nuclear family in different school districts, the request shall be transmitted to the receiving district for enrollment. The board of each school district shall adopt a policy relating to the order in which requests for enrollment in other districts shall be considered. The board of the receiving school district shall enroll the pupil in a school in the receiving district for the following school year unless the receiving district does not have classroom space for the pupil. In all districts involved with volunteer or court-ordered desegregation, minority and nonminority student ratios shall be maintained according to the desegregation plan or order. The superintendent of a district subject to volunteer or court-ordered desegregation may deny a request for transfer under this section if the superintendent finds that enrollment or release of a pupil will adversely affect the district's implementation of the desegregation order or plan. If, however, a transfer request would facilitate a voluntary or court-ordered desegregation plan, the district shall give priority to granting the request over other requests. A parent or guardian, whose request has been denied because of a desegregation order or plan, may appeal the decision of the superintendent to the board of the district in which the request was denied. The board may either uphold or overturn the superintendent's decision. A decision of

the board to uphold the denial of the request is subject to appeal under section 290.1.

Each district shall provide notification to the parent or guardian relating to the transmission or denial of the request. A district of residence shall provide for notification of transmission or denial to a parent or guardian within three days of board action on the request. A receiving district shall provide notification to a parent or guardian, within fifteen days of receipt of the request, of whether the child will be enrolled in that district or whether the request is to be denied.

A request under this section is for a period of not less than four years unless the pupil will graduate, the pupil's family moves to another school district, or the parent or guardian petitions the receiving district for permission to enroll the child in a different district, which may include the district of residence, within the four-year period. If the parent or guardian requests permission of the receiving district to enroll the child in a different district within the four-year period, the receiving district school board may transmit a copy of the request to the other school district within five days of the receipt of the request. The new receiving district shall enroll the pupil in a school in the district unless there is insufficient classroom space in the district or unless enrollment of the pupil would adversely affect court ordered or voluntary desegregation orders affecting a district. A denial of a request to change district enrollment within the four-year period shall be subject to appeal under section 290.1.

The board of directors of the district of residence shall pay to the receiving district the lower district cost per pupil of the two districts, plus any moneys received for the pupil as a result of non-English speaking weighting under section 442.4, subsection 6, for each school year. The district of residence shall also transmit the phase III moneys allocated to the district for the full-time equivalent attendance of the pupil, who is the subject of the request, to the receiving district specified in the request for transfer. If a request filed under this section is for a child requiring special education under chapter 281, the request to transfer to the other district shall only be granted if the receiving district maintains a special education instructional program which is appropriate to meet the child's educational needs and the enrollment of the child in the receiving district's program would not cause the size of the class in that special education instructional program in the receiving district to exceed the maximum class size in rules adopted by the state board of education for that program. For pupils requiring special education, the board of directors of the district of residence shall pay to the receiving district the actual costs incurred in providing the appropriate special education. Quarterly payments shall be made to the receiving district. If the transfer of a pupil from one district to another results in a transfer from one area education agency to another, the sending district shall forward a copy of the request to the sending district's area education agency. The receiving district shall forward a copy of the request to the receiving district's area education agency. Any moneys received by the area education agency of the sending district for the child who is the subject of the request shall be forwarded to the receiving district's area education agency. Notwithstanding section 285.1 relating to transportation of nonresident pupils, the parent or guardian is responsible for transporting the pupil without reimbursement to and from a point on a regular school bus route of the receiving district. A receiving district shall not send school vehicles into the district of residence of the pupil using the open enrollment option under this section, for the purpose of transporting the pupil to and from school in the receiving district. If the child meets the economic eligibility requirements, established under the federal National School Lunch and Child Nutrition Acts, 42 U.S.C. §1751-1785, for free or reduced price lunches, the sending district shall be responsible for providing transportation or paying the pro rata cost of the transportation to a parent or guardian for transporting the child to and from a

point on a regular school bus route of a contiguous receiving district unless the cost of providing transportation or the pro rata cost of the transportation to a parent or guardian exceeds the average transportation cost per pupil transported for the previous school year in the district. If the cost exceeds the average transportation cost per pupil transported for the previous school year, the sending district shall only be responsible for that average per pupil amount. A sending district which provides transportation for a child to a contiguous receiving district under this paragraph may withhold from the district cost per pupil amount, that is to be paid to the receiving district, an amount which represents the average or pro rata cost per pupil for transportation, whichever is less.

A child, whose parent or guardian has submitted a request to enroll the child in a public school in another district, shall, if the request has resulted in the enrollment of the child in the other district, attend school in the other district which is the subject of the request. This requirement shall not apply, however, if the child's family moves out of the district of residence.

Every school district shall adopt a policy which defines the term "*insufficient classroom space*" for that district.

The board of directors of a school district subject to volunteer or court-ordered desegregation may vote not to participate in open enrollment under this section during the school year commencing July 1, 1990, and ending June 30, 1991. If a district chooses not to participate in open enrollment under this paragraph, the district shall develop a policy for implementation of open enrollment in the district for that following school year. The policy shall contain objective criteria for determining when a request would adversely impact the desegregation order or plan and criteria for prioritizing requests that do not have an adverse impact on the order or plan.

A student who attends a grade in grades nine through twelve in a school district other than the district of residence 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 other school district jointly participate or unless the sport in which the student wishes to participate is not offered in the district of residence. However, a pupil who has paid tuition and attended school, or has attended school pursuant to a mutual agreement between the two districts, in a district other than the pupil's district of residence for at least one school year prior to the effective date of this Act, shall be eligible to participate in interscholastic athletic contests and athletic competitions under this section, but only as a member of a team from the district that student had attended.

A student who has been paying tuition and attending school on or before March 25, 1989, in a district other than the student's district of residence shall be permitted to attend school in the district where the student has been paying tuition, during the 1989-1990 school year, by filing a request to use the open enrollment option under this section by August 1, 1989.

If a student has been paying tuition and attending an accredited nonpublic school during the 1988-1989 school year, which is located in a public school district other than the student's public school district of residence, and the nonpublic school discontinues the grade or school which the student would have attended during the 1989-1990 school year, after June 30, 1988, but before August 1, 1989, the student shall be permitted to attend a public school, located within the public school district where the nonpublic school was located, during the 1989-1990 school year if the receiving public school district agrees to accept the student and the student's parent or guardian files a request to use the open enrollment option under this section by August 1, 1989. The public school district where the nonpublic school was located shall count the student in the September 1989 enrollment count.

A student, whose district of residence, for the purposes of school attendance, changes by August 1, 1989, shall be permitted to attend school during the 1989-1990 school year in the district in which the student attended during the 1988-1989 school year if a request to use the open enrollment option under this section is filed by August 1, 1989.

If a child, for which a request to transfer has been filed with a district, has been suspended or expelled in the district, the receiving district named in the request may refuse the request to transfer until the child has been reinstated in the sending district.

A laboratory school under chapter 265 shall be exempt from the provisions of this section.

The director of the department of education shall recommend rules to the state board of education for the orderly implementation of this section. The state board shall adopt rules as needed for the implementation of this section.

89 Acts, ch 12, §1 SF 59; 89 Acts, ch 319, §81 HF 774

Section 280.16, the predecessor to this section, is repealed effective July 1, 1990; 88 Acts, ch 1113, §2; 89 Acts, ch 12 §3

Open enrollment study by education department; annual reports through 1993; 89 Acts, ch 12, §2 SF 59

Section stricken and rewritten

Rewritten section further amended

### 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, or in a facility that provides residential treatment as "facility" is defined in section 125.2, 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.

89 Acts, ch 319, §74 HF 774

Section amended

## CHAPTER 286A

### STATE FUNDING FOR AREA SCHOOLS

#### 286A.2 Definitions.

As used in this chapter and chapter 280A, unless the context otherwise requires:

1. "Area school allowable growth for an instructional cost center" is a dollar amount determined by the department of management by multiplying the state average cost per contact hour for that cost center for a base year times the state percent of growth for the budget year.

2. "Base year" means base year as defined in section 257.2.

3. "Budget year" means budget year as defined in section 257.2.

4. "Contact hour" means fifty minutes of contact between an instructor and students in a scheduled course offering for which students are registered.

The total contact hours for an area school in a cost center for a budget year for purposes of determining state general aid under this chapter are the average of the total contact hours offered by the area school in that cost center for the base year and the two fiscal years preceding the base year.

5. "Contact hour eligible for general aid" is a contact hour as provided in subsection 1 except for the contact hours of nonresident students; contact hours of students in avocational or recreational programs; and contact hours of students in

courses or programs the direct operational costs of which are entirely paid by federal, state, or other governmental agencies, or private subsidy, or both.

6. "Instructional cost center" means one of the following areas of course offerings of the area schools:

- a. Arts and sciences cost center.
- b. Vocational-technical preparatory cost center.
- c. Vocational-technical supplementary cost center.
- d. Adult basic education and high school completion cost center.
- e. Continuing and general education cost center.

7. "Noninstructional function" means all of the following functions:

- a. General institutional function.
- b. Student services function.
- c. Physical plant, including plant maintenance and utility costs functions.
- d. Library services function.

8. "State average cost per contact hour for an instructional cost center" is the actual state average cost per contact hour for that instructional cost center for all area schools for the base year beginning July 1, 1985 adjusted in succeeding years to equal the base year's state average cost per contact hour for the instructional cost center plus the area school allowable growth for the instructional cost center for the budget year. The state average cost per contact hour does not include expenditures for capital outlay.

9. "State percent of growth" is the state percent of growth calculated under section 257.8.

89 Acts, ch 135, §93 HF 535

Education appropriations subcommittee to review method of calculating total contact hours and report to general assembly in 1990; 88 Acts, ch 1284, §37

1989 amendments to subsections 2, 3, and 9 take effect July 1, 1990, for purpose of computations for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535

Subsections 2, 3 and 9 amended

### 286A.14 Area school budget review.

1. An area school budget review procedure is established for the school budget review committee created in section 257.30. The school budget review committee, in addition to its duties under chapter 257, shall meet and hold hearings each year under this chapter to review unusual circumstances of area schools, either upon the committee's motion or upon the request of an area school. The committee may grant supplemental aid to the area school from funds appropriated to the department of education for area school budget review purposes, or an amount may be added to the area school allowable growth for all cost centers and area school allowable growth for noninstructional functions for the budget year either on a temporary or permanent basis, or the committee may allow both.

Unusual circumstances shall include but not be limited to the following:

- a. An unusual increase or decrease in enrollment.
- b. Natural disasters.
- c. Unusual staffing problems.
- d. Unusual necessity for additional funds to permit continuance of a course or program which provides substantial benefit to students.
- e. Unusual need for a new course or program which will provide substantial benefit to students, if the area school establishes the need and the amount of necessary increased cost.
- f. Unique problems of area schools to include vandalism, civil disobedience, and other costs incurred by area schools.

2. When the school budget review committee makes a decision under subsection 1, it shall provide written notice of its decision, including all changes, to the board of directors of the area school and to the department of management.

3. All decisions by the school budget review committee under this chapter shall be made in accordance with reasonable and uniform policies which shall be consistent with this chapter.

4. Failure by an area school to provide information or appear before the school budget review committee as requested for the accomplishment of review or hearing constitutes justification for the committee to instruct the department of revenue and finance to withhold state area school aid to that area school until the committee's inquiries are satisfied completely.

89 Acts, ch 135, §94 HF 535  
1989 amendments to subsection 1 take effect July 1, 1990, for purpose of computations for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535  
Subsection 1, unnumbered paragraph 1 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 282.18 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.

For purposes of section 282.11, a "person aggrieved" or "party aggrieved" means the "parent or guardian of an affected pupil".

89 Acts, ch 12, §4 SF 59  
Section amended

#### 290.5 Decision of state board—rules for appeals.

The decision of the state board shall be final. The state board may adopt rules of procedure for hearing appeals which shall include the power to delegate the actual hearing of the appeal to the director of the department of education or the director's designee, and members of the director's staff designated by the director. The record of appeal so heard shall be available to the state board and the decision recommended by the director of the department of education or the designated administrative law judge shall be approved by the state board in the manner provided in section 256.7, subsection 6.

89 Acts, ch 210, §12 SF 450  
Section amended

## CHAPTER 294

### TEACHERS

**294.2 Authorization for teaching recognized.** Repealed by 89 Acts, ch 265, §43. See §260.9. HF 794

#### 294.3 State aid and tuition.

A school shall not be deprived of its right to be approved for state aid or approved for tuition by reason of the employment of any practitioner as authorized under section 260.9.

89 Acts, ch 265, §37 HF 794  
Section amended

## CHAPTER 294A

### EDUCATIONAL EXCELLENCE PROGRAM—TEACHERS

#### 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, Code 1989. For each school year thereafter, certified enrollment in a school district means that district's basic enrollment for the budget year as defined in section 442.4, Code 1989, or section 257.2.

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 257.37.\*

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 state board of education or the completion of staff development activities licensed by the board of educational examiners, except for programs developed by practitioner preparation institutions, for renewal of licenses 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 licensing under chapter 260.

5. "*Teacher*" means an individual holding a practitioner's license issued under chapter 260, 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.

Effective July 1, 1988, "*teacher*" includes an individual employed on less than a full-time basis by a school district through a contract between the school district and an institution of higher education with a practitioner preparation program in which the teacher is enrolled in a graduate practitioner preparation program.

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.

89 Acts, ch 135, §96 HF 535; 89 Acts, ch 265, §38 HF 794

\*Section 257.37 was vetoed by the governor; 89 Acts, ch 135, §37 HF 535

1989 amendments to subsections 1 and 2 take effect July 1, 1990, for purpose of computations for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535

Subsections 1-5 amended

#### 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.

If the moneys allocated for phase I for a school year exceed the moneys required to pay the total minimum salary supplements to all school districts and area education agencies, the board of directors of a school district that has employed one or more additional teachers as a result of a whole grade sharing agreement completed under section 282.7 may request approval from the department of education for additional funding for its minimum salary supplement for that school year and succeeding school years if the other school district or districts that are parties to the sharing agreement have correspondingly reduced their number of teachers. If the department of education approves the payment of the additional salary supplement to a district, the department shall certify to the department of revenue and finance that the additional payment be made. The payment shall be equal to the amount of the difference between eighteen thousand dollars and the teacher's regular compensation, plus the amount required to make the payments on the additional salary moneys for 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. If the phase I moneys remaining are insufficient to pay the entire amount approved by the department of education, the department of revenue and finance shall prorate the payments to school districts.

89 Acts, ch 5, §1 SF 38  
NEW unnumbered paragraph 2

### **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 licensed 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 licensed 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.

89 Acts, ch 265, §40 HF 794

For amendment effective July 1, 1991, see 89 Acts, ch 135, §97 HF 535

Section amended

#### **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 licensed 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.

89 Acts, ch 265, §40 HF 794

Section amended

#### **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.

Notwithstanding the amount per pupil of the payments specified in this section, for the fiscal year beginning July 1, 1991, and each succeeding fiscal year, if a school district's or area education agency's approved phase III plan for a fiscal year contains a component that includes a performance-based pay plan, the per pupil amount upon which the phase III moneys are based shall be increased by an amount equal to the product of the state percent of growth calculated under section 257.8 and the per pupil amount for the previous fiscal year.

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, for teachers assigned to a specific discipline, or 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, for additional salary for all teachers assigned to a specific discipline within an area education agency, or for additional salary for individual teachers assigned to a multidisciplinary team within an area education agency. If the plan provides additional salary for all teachers assigned to an attendance center, specific discipline, or multidisciplinary team, the receipt of additional salary by those teachers shall be determined on the basis of whether that attendance center, specific discipline, or multidisciplinary team meets specific objectives adopted for that attendance center, specific discipline, or multidisciplinary team. 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, attendance at workshops and other programs for service as cooperating teachers for student teachers, 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 department of education under section 294A.16 that are of equal importance or more appropriately meet the educational needs of the area education agency.

Any summer school program, for which the teacher's salary is paid or supplemented under a supplemental pay plan, shall be open to nonpublic school students in the manner provided in section 256.12.

89 Acts, ch 5, §2 SF 38; 89 Acts, ch 135, §98 HF 535  
New unnumbered paragraph 2 takes effect July 1, 1990, for purpose of computations for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535  
Exception for 1989-1990 fiscal year, to develop phase III evaluation and reporting system; 89 Acts, ch 319, §17 HF 774  
NEW unnumbered paragraph 2  
Unnumbered paragraph 6 amended

**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 licensed 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 licensed 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.

Effective July 1, 1989, a plan adopted by the board of directors of a school district or area education agency may include as a part of the plan a proposal that expands a performance-based pay plan or a supplemental pay plan, or a combination of the two pay plans, that meets the criteria listed in section 294A.14 and was in effect in the school district or area education agency prior to July 1, 1987. The budget for the plan submitted to the department of education shall include both the general fund moneys, which must be equal to those used prior to July 1, 1987, and the phase III moneys which expand the activity, and is for programs that would meet the criteria listed in section 294A.14.

Nothing in this chapter shall be construed to expand or restrict the scope of negotiations in section 20.9.

89 Acts, ch 5, §3 SF 38; 89 Acts, ch 265, §40 HF 794  
NEW unnumbered paragraph 2  
Section amended

### **294A.16 Plan—moneys.**

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 for a school district, and not later than September 1 of a school year for that school year for an area education agency. 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 and both the school district and the area education agency have approved phase III plans, the school district shall transmit to the employing area education agency a portion of its phase III moneys based upon the portion that the salaries of teachers employed by the area education agency and assigned to the school district for the 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 area education agency has an approved phase III plan and the school district does not, the department of management shall transmit phase III moneys to the area education agency for those teachers from the phase III money that would have been paid to the school district if the school district had had an approved phase III plan using the formula that would have been used if the school district had had an approved phase III plan.

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.

A school district or area education agency, which receives money for a school year for an approved phase III plan, may retain up to fifty percent of the moneys allocated to the district or area education agency for the next succeeding school year, in order to continue the approved plan. Any of the retained phase III moneys remaining in the district or area education agency account after the second year of the plan shall revert to the general fund of the state as provided in section 8.33.

Any moneys allocated or retained for an approved phase III plan, and any interest accrued on the moneys, shall not be commingled with state aid payments made, under sections 442.25 and 442.26, to a school district or area education agency and shall be accounted for by the school district or area education agency separately from state aid payment accounts.

89 Acts, ch 5, §4-6 SF 38

Amendment to unnumbered paragraph 2 applies to phase III plans submitted for the school year beginning July 1, 1989; 89 Acts, ch 5, §10

Amendments to unnumbered paragraphs 4 and 5 effective May 5, 1989, and apply to moneys received for an approved phase III plan for the school year beginning July 1, 1988; 89 Acts, ch 135, §126 HF 535

Unnumbered paragraphs 1 and 2 amended

Unnumbered paragraph 4 stricken, rewritten, and divided to be unnumbered paragraphs 4 and 5

### 294A.19 Reports—limit on charging.

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. School district reports shall be filed by July 1 of the next following school year, and area education agency reports shall be filed by September 1 of the next following school year. The report shall describe the plan, its objectives, its implementation, the expenditures made under the plan including the salary increases paid to each eligible employee, and the extent to which its objectives were attained. The report may include any proposed amendments to the plan for the next following school year.

Annually, the department shall summarize the information contained in the reports filed by the school districts and area education agencies. The reports shall be available upon request.

School districts and area education agencies shall not charge other school districts or area education agencies for plans or information about innovative phase III plans that they have developed.

89 Acts, ch 5, §7 SF 38; 89 Acts, ch 319, §75 HF 774

Section amended

NEW unnumbered paragraph 3

### 294A.22 Payments.

Payments for each phase of the educational excellence program shall be made by the department of revenue and finance on a monthly basis commencing on October 15 and ending on June 15 of each fiscal year, taking into consideration the relative budget and cash position of the state resources. The payments shall be separate from state aid payments made pursuant to sections 442.25 and 442.26. The payments made under this section 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.

Payments made to a teacher by a school district or area education agency under this chapter are wages for the purposes of chapter 91A except for payments made under an approved phase III plan where a modified payment plan has either been mutually agreed upon by the board of directors and the certified bargaining representative for certificated employees or for a district that is not organized for collective bargaining purposes where a modified payment plan is adopted by the board.

89 Acts, ch 5, §8, 9 SF 38

For amendment effective July 1, 1991, see 89 Acts, ch 135, §100 HF 535

Unnumbered paragraph 1 amended

NEW unnumbered paragraph 3

**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 licensed 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 licensed employees need not be ratified by the employees or board.

89 Acts, ch 265, §40 HF 794  
Section repealed effective July 1, 1991; 89 Acts, ch 135, §136 HF 535  
Section amended

**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 licensed classroom teachers at institutions under the control of the department of human services for payments for phase II based upon the average student yearly enrollment at each institution as determined by the department of human services.

3. The amount of ninety-four thousand six hundred dollars to be paid to the state board of regents for distribution to licensed classroom teachers at the Iowa braille and sight-saving school and the Iowa school for the deaf for payments of minimum salary supplements for phase I and payments for phase II based upon the average yearly enrollment at each school as determined by the state board of regents.

4. Commencing with the fiscal year beginning July 1, 1988, the amount of one hundred thousand dollars to be paid to the department of education for distribution to the tribal council of the Sac and Fox Indian settlement located on land held in trust by the secretary of the interior of the United States. Moneys allocated under this subsection shall be used for the purposes specified in section 256.30.

5. For 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.

89 Acts, ch 265, §40 HF 794  
Reduced appropriation for 1989-1990 fiscal year; 88 Acts, ch 319, §16 HF 774  
For amendments effective July 1, 1991, see 89 Acts, ch 135, §101, 102 HF 535  
Section amended

**CHAPTER 296****INDEBTEDNESS OF SCHOOL CORPORATIONS****296.7 Indebtedness for insurance authorized—tax levy.**

A school district or merged area school corporation may contract indebtedness and issue general obligation bonds or enter into insurance agreements obligating the school district or corporation to make payments beyond its current budget year to procure or provide for a policy of insurance, a self-insurance program, or establish and maintain a local government risk pool to protect the school district or corporation from tort liability, loss of property, environmental hazards, or any other risk associated with the operation of the school district or corporation. Taxes

for the payment of the principal, premium, or interest on the bonds, the payment of the premium on the insurance policy, the payment of the costs of a self-insurance program, the payment of the costs of a local government risk pool, and the payment of amounts payable under an insurance agreement authorized in this section may be levied in excess of any tax limitation imposed by statute. However, for a school district, a tax levied under this section shall be included in the district management levy under section 298.4. 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.

If the board by resolution restricts the use of money in a fund as a reserve for uninsured liability or a self-insurance program, the use shall be restricted and unavailable for any other purpose until the board removes the restriction. The removal is not effective until all obligations of the restricted fund have been satisfied, or the next fiscal year, whichever occurs later.

89 Acts, ch 135, §103 HF 535  
 1989 amendments take effect July 1, 1990, for purpose of computations required for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535  
 Section amended

## CHAPTER 297

### SCHOOLHOUSES AND SCHOOLHOUSE SITES

#### 297.36 Loan agreements.

In order to make immediately available proceeds of the voter-approved physical plant and equipment levy which has been approved by the voters as provided in section 298.2, the board of directors may, with or without notice, borrow money and enter into loan agreements in anticipation of the collection of the tax with a bank, investment banker, trust company, insurance company, or insurance group.

By resolution, the board shall provide for an annual levy which is within the limits of the voter-approved physical plant and equipment levy to pay for the amount of the principal and interest due each year until maturity. The board shall file a certified copy of the resolution with the auditor of each county in which the district is located. The filing of the resolution with the auditor makes it the duty of the auditor to annually levy the amount certified for collection until funds are realized to repay the loan and interest on the loan in full.

The loan must mature within the period of time authorized by the voters and shall bear interest at a rate which does not exceed the limits under chapter 74A. A loan agreement entered into pursuant to this section shall be in a 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 voter-approved physical plant and equipment levy, or so much thereof as will be sufficient to pay the loan and interest on the loan.

The proceeds of a loan must be deposited in a fund which is separate from other district funds. Warrants paid from this fund must be for purposes authorized for the voter-approved physical plant and equipment levy.

This section does not limit the authority of the board of directors to levy the full amount of the voter-approved physical plant and equipment levy, but if and to whatever extent the tax is levied in any year in excess of the amount of principal and interest falling due in that year under a loan agreement, the first available proceeds, to an amount sufficient to meet maturing installments of principal and interest under the loan agreement, shall be paid into the sinking fund for the loan before the taxes are otherwise made available to the school corporation for other

school purposes, and the amount required to be annually set aside to pay principal of and interest on the money borrowed under the loan agreement constitutes a first charge upon the proceeds of the voter-approved physical plant and equipment levy, which tax shall be pledged to pay the loan and the interest on the loan.

This section is supplemental and in addition to existing statutory authority to finance the purposes specified in section 298.2 for the physical plant and equipment levy, and for the borrowing of money and execution of loan agreements in connection with that section, and is not subject to any other law. The fact that a school corporation may have previously borrowed money and entered into loan agreements under authority of this section does not prevent the school corporation from borrowing additional money and entering into further loan agreements if the aggregate of the amount payable under all of the loan agreements does not exceed the proceeds of the voter-approved physical plant and equipment levy.

89 Acts, ch 135, §105 HF 535  
 1989 amendments take effect July 1, 1990, for purpose of computations required for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535  
 Section amended

## CHAPTER 298

### SCHOOL TAXES AND BONDS

#### 298.1 School taxes.

The board of each school district shall estimate the amount of the proposed expenditures and proposed receipts for the general school purposes at a time and in a manner to effectuate the provisions of chapter 257 and sections 281.9 and 281.11. Compliance with chapter 24 shall be observed.

89 Acts, ch 135, §106 HF 535  
 1989 amendment takes effect July 1, 1990, for purpose of computations required for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535  
 Section amended

#### 298.2 Imposition of physical plant and equipment levy.

1. A physical plant and equipment levy of not exceeding one dollar per thousand dollars of assessed valuation in the district is established except as otherwise provided in this subsection. The physical plant and equipment levy consists of the regular physical plant and equipment levy of not exceeding thirty-three cents per thousand dollars of assessed valuation in the district and a voter-approved physical plant and equipment levy of not exceeding sixty-seven cents per thousand dollars of assessed valuation in the district. However, the voter-approved physical plant and equipment levy may consist of a combination of a physical plant and equipment property tax levy and a physical plant and equipment income surtax as provided in subsection 3 with the maximum amount levied and imposed limited to an amount that could be raised by a sixty-seven cent property tax levy. The levy limitations of this subsection are subject to subsection 5.

2. The board of directors of a school district may certify for levy by March 15 of a school year a tax on all taxable property in the school district for the regular physical plant and equipment levy.

3. The board may, and upon the written request of not less than one hundred eligible electors or thirty percent of the number of eligible electors voting at the last regular school election, whichever is greater, shall, direct the county commissioner of elections to provide for submitting the proposition of levying the voter-approved physical plant and equipment levy for a period of time authorized by the voters in the notice of election, not to exceed ten years, in the notice of the regular school election. The proposition is adopted if a majority of those voting on the proposition at the election approves it. The voter-approved physical plant and equipment levy shall be funded either by a physical plant and equipment property

tax or by a combination of a physical plant and equipment property tax and a physical plant and equipment income surtax, as determined by the board. However, if the board intends to enter into a rental or lease arrangement under section 279.26, or intends to enter into a loan agreement under section 297.36, only a property tax shall be levied for those purposes. Subject to the limitations of section 298.14, if the board uses a combination of a physical plant and equipment property tax and a physical plant and equipment surtax, for each fiscal year the board shall determine the percent of income surtax to be imposed expressed as full percentage points, not to exceed twenty percent.

If a combination of a property tax and income surtax is used, by March 15 of the previous school year, the board shall certify the percent of the income surtax to be imposed and the amount to be raised to the department of management and the department of management shall establish the rate of the property tax and income surtax for the school year. The physical plant and equipment property tax and income surtax shall be levied or imposed, collected, and paid to the school district in the manner provided for the instructional support program in sections 257.21 through 257.26.

4. The proposition to levy the voter-approved physical plant and equipment levy is not affected by a change in the boundaries of the school district, except as otherwise provided in this section. If each school district involved in a school reorganization under chapter 275 has adopted the voter-approved physical plant and equipment levy and if the voters have not voted upon the proposition to levy the voter-approved physical plant and equipment levy in the reorganized district, the existing voter-approved physical plant and equipment levy is in effect for the reorganized district for the least amount and the shortest time for which it is in effect in any of the districts.

Authorized levies for the period of time approved are not affected as a result of a failure of a proposition proposed to expand the purposes for which the funds may be expended.

5. If the board of directors of a school district in which the voters have authorized the schoolhouse tax prior to July 1, 1991, has entered into a rental or lease arrangement under section 279.26, Code 1989, or has entered into a loan agreement under section 297.36, Code 1989, the levy shall continue for the period authorized and the maximum levy that can be authorized under the voter-approved physical plant and equipment levy is reduced by the rate of the schoolhouse tax.

89 Acts, ch 135, §107 HF 535

Effective July 1, 1990, for purpose of computations required for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535

Limit on total surtax, §298.14

NEW section

### 298.3 Revenues from the levies.

The revenue from the regular and voter-approved physical plant and equipment levies shall be placed in the schoolhouse fund and expended only for the following purposes:

1. The purchase and improvement of grounds. For the purpose of this subsection:
  - a. "Purchase of grounds" includes the legal costs relating to the property acquisition, costs of surveys of the property, costs of relocation assistance under state and federal law, and other costs incidental to the property acquisition.
  - b. "Improvement of grounds" includes grading, landscaping, paving, seeding, and planting of shrubs and trees; constructing sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; surfacing and soil treatment of athletic fields and tennis courts; furnishing and installing flagpoles, gateways, fences, and underground storage tanks which are not parts of building service systems; demolition work; and special assessments against the school district for public improvements, as defined in section 384.37.

2. The construction of schoolhouses or buildings and opening roads to schoolhouses or buildings.
  3. The purchase of buildings and the purchase of a single unit of equipment exceeding five thousand dollars in value.
  4. The payment of debts contracted for the erection or construction of schoolhouses or buildings, not including interest on bonds.
  5. Procuring or acquisition of libraries.
  6. Repairing, remodeling, reconstructing, improving, or expanding the schoolhouses or buildings and additions to existing schoolhouses.
- For the purpose of this subsection, "repairing" means restoring an existing structure or thing to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance; and "reconstructing" means rebuilding or restoring as an entity a thing which was lost or destroyed.
7. Expenditures for energy conservation.
  8. The rental of facilities under chapter 28E.
  9. Purchase of transportation equipment for transporting students.
  10. Lease-purchase option agreements for school buildings.
  11. Equipment purchases for recreational purposes.

Interest earned on money in the schoolhouse fund may be expended for a purpose listed in this section.

89 Acts, ch 135, §108 HF 535  
 Effective July 1, 1990, for purpose of computations required for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535  
 NEW section

**298.4 District management levy.**

The board of directors of a school district may certify for levy by March 15 of a school year, a tax on all taxable property in the school for a district management levy. The revenue from the tax levied in this section shall be placed in the district management subfund of the general fund of the school district. The district management levy shall be expended only for the following purposes:

1. To pay the cost of unemployment benefits as provided in section 96.31.
2. To pay the costs of liability insurance and the costs of a judgment or settlement relating to liability together with interest accruing on the judgment or settlement to the expected date of payment.
3. To pay the costs of insurance agreements under section 296.7.
4. To pay the costs of a judgment under section 298.16.
5. To pay the cost of early retirement benefits to employees under section 279.46.

89 Acts, ch 135, §109 HF 535  
 Effective July 1, 1990, for purpose of computations required for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535  
 NEW section

**298.9 Special levies.**

If the voter-approved physical plant and equipment levy, consisting solely of a physical plant and equipment property tax levy, is voted at a special election and certified to the board after the regular levy is made, the board shall at its next regular meeting levy the tax and cause it to be entered upon the tax list to be collected as other school taxes. If the certification is filed prior to April 1, the annual levy shall begin with the tax levy of the year of filing. If the certification is filed after April 1 in a year, the levy shall begin with the levy of the fiscal year succeeding the year of the filing of the certification.

89 Acts, ch 135, §110 HF 535  
 1989 amendments take effect July 1, 1990, for purpose of computations required for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535  
 Section amended

**298.10 Levy for cash reserve.**

The board of directors of a school district may certify for levy by March 15 of a school year, a tax on all taxable property in the school district in order to raise an amount for a necessary cash reserve for a school district's general fund. The amount raised for a necessary cash reserve does not increase a school district's authorized expenditures as defined in section 257.7.

89 Acts, ch 135, §111 HF 535  
1989 amendments take effect July 1, 1990, for purpose of computations required for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535  
Section amended

**298.14 School district income surtaxes.**

For each fiscal year, the cumulative total of the percents of surtax approved by the board of directors of a school district and collected by the department of revenue and finance under sections 257.21, 257.29, 279.54, and 298.2, and the enrichment surtax under section 442.15, Code 1989, shall not exceed twenty percent.

A school district income surtax fund is created in the office of treasurer of state. Income surtaxes collected by the department of revenue and finance under sections 257.21, 257.29, 279.54, and 298.2 and section 442.15, Code 1989, shall be deposited in the school district income surtax fund to the credit of each school district. A separate accounting of each surtax, by school district, shall be maintained.

The director of revenue and finance shall draw warrants in payment of the surtaxes collected in each school district. Warrants shall be payable in two installments to be paid on approximately the first day of December and the first day of February following collection of the taxes and shall be delivered to the respective school districts.

89 Acts, ch 135, §112 HF 535  
Effective July 1, 1990, for purpose of computations required for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535  
NEW section

**298.16 Judgment tax.**

If the proper fund is not sufficient, then, unless its board has provided by the issuance of bonds for raising the amount necessary to pay a judgment, the cost of the judgment shall be included in the district management levy.

89 Acts, ch 135, §113 HF 535  
1989 amendments take effect July 1, 1990, for purpose of computations required for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535  
Section amended

**CHAPTER 299****COMPULSORY EDUCATION****299.1 Attendance requirements.**

The parent, guardian, or custodian of a child who is over seven and under sixteen years of age by September 15, in proper physical and mental condition to attend school, shall enroll the child in some public school, commencing as provided under section 279.10.

The board may, by resolution, require attendance in the public schools for the entire time when the schools are in session in any school year.

A child shall attend an accredited or approved school for at least one hundred twenty days each school year. The requirement shall be met by attendance for at least thirty days each school quarter, or a similar distribution of attendance throughout the school year.

In lieu of such attendance such child may attend upon equivalent instruction by a licensed teacher elsewhere.

89 Acts, ch 265, §41 HF 794  
Unnumbered paragraph 4 amended

#### **299.24 Religious groups exempted from school standards.**

When members or representatives of a local congregation of a recognized church or religious denomination established for ten years or more within the state of Iowa prior to July 1, 1967, which professes principles or tenets that differ substantially from the objectives, goals, and philosophy of education embodied in standards set forth in section 256.11, and rules adopted in implementation thereof, file with the director of the department of education proof of the existence of such conflicting tenets or principles, together with a list of the names, ages, and post-office addresses of all persons of compulsory school age desiring to be exempted from the compulsory education law and the educational standards law, whose parents or guardians are members of the congregation or religious denomination, the director, subject to the approval of the state board of education, may exempt the members of the congregation or religious denomination from compliance with any or all requirements of the compulsory education law and the educational standards law for two school years. When the exemption has once been granted, renewal of such exemptions for each succeeding school year may be conditioned by the director, with the approval of the board, upon proof of achievement in the basic skills of arithmetic, the communicative arts of reading, writing, grammar, and spelling, and an understanding of United States history, history of Iowa, and the principles of American government, by persons of compulsory school age exempted in the preceding year, which shall be determined on the basis of tests or other means of evaluation selected by the director with the approval of the state board. The testing or evaluation, if required, shall be accomplished prior to submission of the request for renewal of the exemption. Renewal requests shall be filed with the director on or before April 15 of the school year preceding the school year for which the applicants desire exemption.

89 Acts, ch 296, §26 SF 141  
Section amended

## CHAPTER 301

### TEXTBOOKS

**301.7 Bids—advertisement.** Repealed by 89 Acts, ch 214, §9. HF 728

#### **301.30 Payment of claims for nonpublic school pupil textbook services.**

Boards of directors of school districts shall be required to provide textbook services to nonpublic school pupils as provided in section 301.1 only during school years when the general assembly has appropriated funds to the department of education for the payment of claims for textbook costs submitted by the school district.

If the funds appropriated by the general assembly are not sufficient to pay claims submitted by the school districts, the amount paid to each school district by the department shall be prorated on the basis of funds so appropriated. The difference between the amount of the claim of a school district and the amount of payment received from the department of education shall be paid by the parent or guardian of the nonpublic school pupil served.

The costs of providing textbook services to nonpublic school pupils as provided in section 301.1 shall not be included in the computation of district cost under chapter 257, but shall be shown in the budget as an expense from miscellaneous

income. Any textbook reimbursements received by a local school district for serving nonpublic school pupils shall not affect district cost limitations of chapter 257. The reimbursements provided in this section are miscellaneous income as defined in section 257.2.

Claims for reimbursement shall be made to the department of education by the public school district providing textbook services during a school year on a form prescribed by the department, and the claim shall state the services provided and the actual costs incurred. Claims shall be accompanied by an affidavit of an officer of the public school district affirming the accuracy of the claim. By February 1 and by July 15 of each year the department shall certify to the director of revenue and finance the amounts of approved claims to be paid, and the director of revenue and finance shall draw warrants payable to school districts which have established claims. The public school district in which the pupil resides may contract with the public school district of attendance to have the latter school furnish the services and shall receive reimbursement for the payment of said contract; however, said services must be comparable to the services of the district of residence and cannot exceed the per pupil cost of the program of the district of residence.

89 Acts, ch 135, §114 HF 535  
1989 amendments to unnumbered paragraph 3 take effect July 1, 1990, for purpose of computations required for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535  
Unnumbered paragraph 3 amended

## CHAPTER 302

### SCHOOL FUNDS

#### 302.1A Transfer of interest.

1. 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 and to the national center for gifted and talented education in the manner provided in this section.

2. For a transfer of interest earned to the first in the nation in education foundation, prior to July 1, October 1, January 1, and 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 cumulative total value of contributions received under section 257A.7 for deposit in the fund and for the use of the foundation. The cumulative total value of contributions received includes the value of the amount deposited in the national center endowment fund established in section 263.8A in excess of eight hundred seventy-five thousand dollars. The value of in-kind contributions shall be based upon the fair market value of the contribution determined for income tax purposes.

The portion of the permanent school fund that is equal to the cumulative total value of contributions, less the portion of the permanent school fund dedicated to the national center for gifted and talented education, is dedicated to the first in the nation in education foundation for that year. The interest earned on this dedicated amount shall be transferred by the department of revenue and finance to the credit of the first in the nation in education foundation.

3. For a transfer of interest earned to the national center endowment fund established in section 263.8A, prior to July 1, October 1, January 1, and March 1 of each year, the state university of Iowa shall certify to the department of revenue and finance the cumulative total value of contributions received and deposited in the national center endowment fund. The department of revenue and finance shall dedicate the interest earned on a portion of the permanent school fund to the national center in the manner provided in this subsection. The portion of the

permanent school fund that is used to determine the dedicated amount of interest earned for a year shall equal one-half the cumulative total value of the contributions deposited in the national center endowment fund, not to exceed eight hundred seventy-five thousand dollars. Within fifteen days following certification by the state university of Iowa, the department of revenue and finance shall transmit the interest earned on the dedicated amount to the state university of Iowa for the use of the national center for gifted and talented education.

4. The remaining portion of the interest earned on the permanent school fund shall become a part of the permanent school fund.

89 Acts, ch 319, §77, 78 HF 774

Exception for 1989-1990 fiscal year; 89 Acts, ch 319, §3 HF 774

Subsection 2, unnumbered paragraph 1 amended

Subsection 3 amended

## CHAPTER 303

### DEPARTMENT OF CULTURAL AFFAIRS

#### 303.4 State historical society of Iowa—board of trustees.

1. A state historical society board of trustees is established consisting of seven members selected as follows:

a. Three members shall be elected by the members of the state historical society according to rules established by the board of trustees.

b. Four members shall be appointed by the governor, two of whom shall be on the faculty of a college or university in the state in disciplines related to the activities of the historical society.

2. The term of office of members of the board of trustees is three years commencing and ending as provided in section 69.19. The terms of office of the governor's appointees are staggered so that in one year two members are appointed and in each of the next two years one member is appointed.

89 Acts, ch 78, §1 HF 367

Section amended

#### 303.5 Powers and duties of state historical society administrator.

The state historical society administrator may:

1. Make and sign any agreements and perform any acts which are necessary, desirable, or proper to carry out the purpose of the division.

2. Request and obtain assistance and data from any department, division, board, bureau, commission, or agency of the state.

3. Accept any federal funds granted, by act of congress or by executive order, for all or any purposes of this subchapter.

89 Acts, ch 78, §2 HF 367

NEW section

#### 303.7 Membership in state historical society.

1. The state historical society board of trustees shall recommend to the director rules for membership of the general public in the state historical society, including rules relating to membership fees. Members shall be persons who indicate an interest in the history, progress, and development of the state and who pay the prescribed fee. The members of the state historical society may meet at least one time per year to further the understanding of the history of this state. The members of the society shall not determine policy for the department of cultural affairs but may advise the director and perform functions to stimulate interest in the history of this state among the general public. The society may perform other activities related to history which are not contrary to this chapter.

2. As used in this chapter, "state historical society" means the state historical society of Iowa, an agency of the state which is part of the department of cultural affairs. It does not mean or include any private entity.

3. Unless designated otherwise, a gift, bequest, devise, endowment, or grant to or application for membership in the state historical society shall be presumed to be to or in the state historical society of Iowa.

4. Notwithstanding section 633.63, the board may enter into agreements authorizing nonprofit foundations acting solely for the support of the state historical society to administer its membership program and funds.

89 Acts, ch 78, §3 HF 367  
NEW subsection 4

### 303.8 Powers and duties of board and division.

1. The state historical society board of trustees shall:

a. Recommend to the state historical society a comprehensive, coordinated, and efficient policy to preserve, research, interpret, and promote to the public an awareness and understanding of local, state, and regional history.

b. Make recommendations to the division administrator on historically related matters.

c. Review and recommend to the director or the director's designee policy decisions regarding the division.

d. Recommend to the state historic preservation officer for approval the state preservation plan.

e. Perform other functions prescribed by law to further historically related matters in the state.

2. The department shall:

a. Have authority to acquire by fee simple title historic properties by gift, purchase, devise, or bequest; preserve, restore, transfer, and administer historic properties; and charge reasonable admission to historic properties.

b. Maintain research centers in Des Moines and Iowa City.

89 Acts, ch 78, §4 HF 367  
Subsection 1, paragraphs a-d amended

### 303.9 Funds received by department.

1. All funds received by the department, including but not limited to gifts, endowments, funds from the sale of memberships in the state historical society, funds from the sale of mementos and other items relating to Iowa history as authorized under subsection 2, interest generated by the life membership trust fund, and fees, shall be credited to the account of the department and are appropriated to the department to be invested or used for programs and purposes under the authority of the department. Interest earned on funds credited to the department, except funds appropriated to the department from the general fund of the state, shall be credited to the department. Section 8.33 does not apply to funds credited to the department under this section.

2. The department may sell mementos and other items relating to Iowa history and historic sites on the premises of property under control of the department and at the state capitol. Notwithstanding sections 18.12 and 18.16, the department may directly and independently enter into rental and lease agreements with private vendors for the purpose of selling mementos. All fees and income produced by the sales and rental or lease agreements shall be credited to the account of the department. The mementos and other items sold by the department or vendors under this subsection are exempt from section 18.6. The department is not a retailer under chapter 422 and the sale of such mementos and other items by the department is not a retail sale under chapter 422 and is exempt from the sales tax.

3. Notwithstanding section 633.63, the board may authorize nonprofit foundations acting solely for the support of the state historical society of Iowa to accept

and administer trusts deemed by the board to be beneficial to the division's operations. The board and the foundation may act as trustees in such instances.

89 Acts, ch 78, §5 HF 367  
NEW subsection 3

### 303.11 Gifts.

The division may accept gifts and bequests which shall be used in accordance with the desires of the donor if expressed. Funds contained in an endowment fund for either the department of history and archives or the state historical society existing on July 1, 1974, remain an endowment of the division. Gifts shall be accepted only on behalf of the division, and gifts to a part, branch, or section of the division are presumed to be gifts to the division.

If publication of a book is financed by the endowment fund, this chapter does not prevent the return of moneys from sales of the book to the endowment fund.

89 Acts, ch 78, §6 HF 367  
Unnumbered paragraph 1 amended

### 303.12 Archives.

"Archives" means documents, books, papers, photographs, sound recordings, or similar material produced or received pursuant to law in connection with official government business, which no longer have administrative, legal, or fiscal value to the office having present custody of them, and which have been appraised by the state archivist as having sufficient historical, research, or informational value to warrant permanent preservation. The state archivist is the trustee and custodian of the archives of Iowa, except that county or municipal archives are not included unless they are voluntarily deposited with the state archivist with the written consent of the state archivist. The state archivist shall prescribe rules for the systematic arrangement of archives as to the proper labeling to indicate the contents and order of filing and the archives must be labeled before the archives may be transferred to the state archivist's custody.

89 Acts, ch 78, §7 HF 367  
Section amended

### 303.13 Transfer of archives.

The state executive and administrative departments, officers or offices, councils, boards, bureaus, and commissions, shall transfer and deliver to the state archives as defined in section 303.12 and as prescribed in the records management manual. Before transferring archives, the office of present custody shall file with the state archivist a classified list of the archives being transferred in detail as the state archivist prescribes. If the state archivist, on receipt of the list, and after consultation with the chief executive of the office filing the classified list or with a representative designated by the executive, finds that, according to the records management manual, certain classifications of the archives listed are not of sufficient historical, legal, or administrative value to justify permanent preservation, the state archivist shall not accept the material for deposit in the state archives.

89 Acts, ch 78, §8 HF 367  
Section amended

### 303.14 Removal of original.

After archives have been received by the state archivist, they shall not be removed from the state archivist's custody without the state archivist's consent except in obedience to a subpoena of a court of record or a written order of the state executive council.

The state archivist is not required to preserve permanently vouchers, claims, canceled or redeemed state warrants, or duplicate warrant registers of the department of revenue and finance and the treasurer of state, but may, after microfilming, destroy by burning or shredding any warrants having no historical

value, that have been in the state archivist's custody for a period of one year, and may destroy by burning or shredding any vouchers, claims, and duplicate warrant registers which have been in the state archivist's custody for a period of one year. A properly authenticated reproduction of a microfilmed record is admissible in evidence in a court in this state.

89 Acts, ch 78, §9 HF 367  
Section amended

### 303.15 Certified copies—fees.

Upon request of a person, the state archivist shall make a certified copy of any document, manuscript, or record contained in the archives or in the custody of the department except if reproduction is inappropriate because of legal, curatorial, or physical considerations. If a copy is properly authenticated it has the same legal effect as though certified by the officer from whose office it was obtained or by the secretary of state. The copy may be made in writing, or by a suitable photographic process. The state archivist shall charge and collect for copies the fees allowed by law to the official in whose office the document originates for certified copies. The state archivist shall charge a person requesting a search of census records for the purpose of determining genealogy the actual cost of performing the search.

89 Acts, ch 78, §10 HF 367  
Section 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 one hundred 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 one hundred 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 and recommendation by the state historical society board of trustees.

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 ten percent of the amount appropriated to the department, but in no event more than seventy-five thousand dollars for administration of the grant and loan program.

8. a. The department may establish a historical resource grant and loan fund composed of any money appropriated by the general assembly for that purpose, funds allocated pursuant to section 455A.19, and of any other moneys available to and obtained or accepted by the 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 are eligible for not more than one hundred 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 historical resource grant and loan fund, from fees and from any income received by investments of money in the fund for costs, commissions, attorney fees and other reasonable expenses related to and necessary for making and protecting direct loans under this section, and for the recovery of moneys loaned or the management of property acquired in connection with such loans.

89 Acts, ch 78, §11, 12 HF 367; 89 Acts, ch 236, §12-14 HF 769; 89 Acts, ch 319, §79 HF 774

See Code editor's note to §22.7

Subsection 5, paragraphs e-g amended

Subsection 7 amended

Subsection 8, paragraph a amended

Subsection 8, paragraph b, subparagraph (2) amended

### 303.34 Areas of historical significance.

The provisions of sections 303.20 to 303.33 do not apply within the limits of a city. However, in order for a city to designate an area which is deemed to merit preservation as an area of historical significance, the following shall apply:

1. An area of historical significance shall be proposed by the governing body of the city on its own motion or upon the receipt by the governing body of a petition signed by residents of the city. The city shall submit a description of the proposed area of historical significance or the petition describing the proposed area, if the proposed area is a result of the receipt of a petition, to the historical division which shall determine if the proposed area meets the criteria in subsection 2 and may make recommendations concerning the proposed area. Any recommendations made by the division shall be made available by the city to the public for viewing during normal working hours at a city government place of public access.

2. A city shall not designate an area as an area of historical significance unless it contains contiguous pieces of property under diverse ownership which meets the criteria specified in section 303.20, subsection 1, paragraphs "a" to "f".

3. A city may provide by ordinance for the establishment of a commission to deal with matters involving areas of historical significance but shall provide by ordinance for such commission upon the enactment of the ordinance designating an area as an area of historical significance as required in subsection 4. Upon the establishment of the commission the city shall provide by ordinance for the method of appointment, the number, and terms, of members of the commission and for the duties and powers of the commission. The commission shall contain not less than three members. The members of the commission shall be appointed with due regard to proper representation of residents and property owners of the city and their relevant fields of knowledge including but not limited to history, urban planning, architecture, archaeology, law, and sociology. At least one resident of each designated area of historical significance shall be appointed to the commission. Cities with a population of more than fifty thousand shall not appoint more than one-third of the members to the commission of an area of historical significance that are members of a city zoning commission appointed pursuant to chapter 414. The commission shall have the power to approve or deny applications for proposed alterations to exterior features within an area designated as an area of historical significance. An aggrieved party may appeal the commission's action to the governing body of the city. If not satisfied by the decision of the governing body, the party may appeal within sixty days of the governing body's decision to the district court for the county in which the designated area is located. On appeal the governing body or the district court as the case may be shall consider whether the commission has exercised its powers and followed the guidelines established by the law and ordinance, and whether the commission's action was patently arbitrary or capricious.

4. An area shall be designated an area of historical significance upon enactment of an ordinance of the city. Before the ordinance or an amendment to it is enacted, the governing body of the city shall submit the ordinance or amendment to the historical division for its review and recommendations.

For the purpose of this section, the term "city" includes a special land use district established pursuant to subchapter IV of this chapter.

89 Acts, ch 145, §1 SF 71

NEW unnumbered paragraph 2 (at end of section)

### **303.79A Purchase of energy efficiency packages.**

The public broadcasting division of the department of cultural affairs may use the state of Iowa facilities improvement corporation to purchase energy efficiency packages for its ultrahigh frequency transmitters.

89 Acts, ch 297, §5 SF 419

NEW section

### **303.92 State library commission established—duties of department.**

1. The state library commission consists of one member appointed by the state supreme court and six members appointed by the governor to serve four-year

terms beginning and ending as provided in section 69.19. Of the governor's appointees, one member shall be from the medical profession and five members selected at large. Not more than three of the members appointed by the governor shall be of the same gender. The members shall be reimbursed for their actual expenditures necessitated by their official duties. Members may also be eligible for compensation as provided in section 7E.6.

2. The commission shall elect one of its members as chairperson. The commission shall meet at the time and place specified by call of the chairperson. Four members are a quorum for the transaction of business.

3. The department:

a. May receive and expend money for providing programs and services. The department may receive, accept, and administer any moneys appropriated or granted to it, separate from the general library fund, by the federal government or by any other public or private agency.

b. Shall foster public awareness of the condition of libraries in Iowa and of methods to improve library services to the citizens of the state.

c. Shall establish and administer standards for state agency libraries, the Iowa regional library system, and public libraries.

d. May accept gifts, contributions, bequests, endowments, or other moneys, including but not limited to the Westgate endowment fund, for any or all purposes of the department under this subchapter. Interest earned on moneys accepted under this paragraph shall be credited to the fund or funds to which the gifts, contributions, bequests, endowments, or other moneys have been deposited, and is available for any or all purposes of the department under this subchapter. The department shall report annually to the general assembly regarding the gifts, contributions, bequests, endowments, or other moneys accepted pursuant to this paragraph and the interest earned on them.

89 Acts, ch 235, §1 HF 293  
Subsection 3, NEW paragraph d

## CHAPTER 303B

### REGIONAL LIBRARY SYSTEM

#### 303B.3 Election.

A trustee of a regional board shall be elected without regard to political affiliation at the general election by the vote of the electors of the trustee's district from a list of nominees, the names of which have been taken from nomination papers filed in accordance with chapter 45 in all respects except that they shall be signed by not less than twenty-five eligible electors of the respective district. The election shall be administered by the commissioner who has jurisdiction under section 47.2.

The votes cast in the election shall be canvassed and abstracts of the votes cast shall be promptly certified by the commissioner to the commissioner of elections who is responsible under section 47.2 for conducting elections for that regional library board district. In each county whose commissioner of elections is responsible under section 47.2 for conducting elections held for a regional library board district, the county board of supervisors shall convene at nine o'clock a.m. on the third Monday in November, canvass the abstracts of votes cast and declare the results of the voting. The commissioner shall at once issue certificates of election to each person declared elected.

89 Acts, ch 136, §68 SF 371  
Unnumbered paragraph 2 amended

## CHAPTER 304A

### FINE ARTS PROJECTS AND INDEMNIFICATION FOR SPECIAL EXHIBITS

#### 304A.21 Definitions.

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

1. "Administrator" means the administrator of the arts division of the department of cultural affairs.
2. "Council" means the Iowa state arts council.
3. "Department" means the department of general services.
4. "Indemnity agreement" means an agreement authorized by section 304A.22.
5. "Nonprofit organization" means a corporation organized under chapter 504 or 504A or which holds a permit or certificate under chapter 504 or 504A to do business or conduct affairs in this state.

89 Acts, ch 76, §6 HF 256  
Subsection 3 amended

#### 304A.25 Review and determination as to qualification for indemnity coverage.

1. Every application received by the administrator shall be submitted to the department of general services which shall review the application and determine whether the applicant qualifies for indemnity coverage under this division. The criteria for qualification shall be prescribed by rule of the department of general services and shall include but are not limited to:

- a. Physical security of the applicant's exhibition facilities and of the means of transportation of the items.
- b. Experience and qualifications of the applicant's director, curator, registrar, or other staff.
- c. Eligibility of the applicant's exhibition facilities for commercial insurance coverage of art objects and artifacts exhibited there.
- d. Availability of proper equipment to protect art objects and artifacts from damage from extremes of temperature or humidity or exposure to glare, dust, or corrosion.

2. The department may consult with experts as necessary to carry out its duties under this section.

3. If the department of general services is not staffed for risk management, the department shall utilize the services of a consultant in carrying out the department's duties under this chapter.

89 Acts, ch 76, §7 HF 256  
Section amended

#### 304A.29 Claims.

1. Claims for losses covered by indemnity agreements under this division shall be submitted to the department of general services which shall review the claims. If the department determines that the loss is covered by the agreement, the department shall certify the validity of the claim and authorize payment of the amount of loss, less any deductible portion, to the lender.

2. The department shall prescribe rules providing for prompt adjustment of valid claims. The rules shall include provisions for the employment of consultants and for the arbitration of issues relating to the dollar value of damages involving less than total loss or destruction of covered items.

3. The authorization for payment shall be forwarded to the director of revenue and finance, who shall issue a warrant for payment of the claim from the state general fund out of any funds not otherwise appropriated.

89 Acts, ch 76, §8 HF 256  
Subsection 1 amended

## CHAPTER 306

## ESTABLISHMENT, ALTERATION, AND VACATION OF HIGHWAYS

**306.4 Jurisdiction of systems.**

The jurisdiction and control over the roads and streets of the state are vested as follows:

1. Jurisdiction and control over the primary roads shall be vested in the department.
2. Jurisdiction and control over the secondary roads shall be vested in the county board of supervisors of the respective counties.
3. Jurisdiction and control over the municipal street system shall be vested in the governing bodies of each municipality; except that the department and the municipal governing body shall exercise concurrent jurisdiction over the municipal extensions of primary roads in all municipalities. When concurrent jurisdiction is exercised, the department shall consult with the municipal governing body as to the kind and type of construction, reconstruction, repair, and maintenance and the two parties shall enter into agreements with each other as to the division of costs thereof.

When the two parties cannot initially come to agreement as to the division of costs under this subsection, they shall contract with an organization in this state to provide mediation services. The costs of the mediation services shall be equally allocated between the two parties. If after submitting to mediation the parties still cannot come to agreement as to the division of costs, the mediator shall sign a statement that the parties did not reach an agreement, and the parties shall then submit the matter for binding arbitration to a mutually agreed-upon third party. If the parties cannot agree upon a third-party arbitrator, they shall submit the matter to an arbitrator selected under the rules of the American arbitration association.

4. Jurisdiction and control over the roads and streets in any state park, state institution or other state land shall be vested in the board, commission, or agency in control of such park, institution, or other state land; except that:

a. The department and the controlling agency shall have concurrent jurisdiction over any road which is an extension of a primary road and which both enters and exits from the state land at separate points. The department may expend the moneys available for such roads in the same manner as the department expends such funds on other roads over which the department exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement the jurisdiction and control of such road shall remain in the department.

b. The board of supervisors of any county and the controlling state agency shall have concurrent jurisdiction over any road which is an extension of a secondary road and which both enters and exits from the state land at separate points. The board of supervisors of any county may expend the moneys available for such roads in the same manner as the board expends such funds on other roads over which the board exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such road shall remain in the board of supervisors of the county.

5. Jurisdiction and control over parkways within county parks and conservation areas shall be vested in the county conservation boards within their respective counties; except that:

a. The department and the county conservation board shall have concurrent jurisdiction over an extension of a primary road which both enters and exits from a county park or other county conservation area at separate points. The department may expend moneys available for such roads in the same manner as the department expends such funds on other roads over which the department exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such roads shall remain in the department.

b. The board of supervisors of any county and the county conservation board shall have concurrent jurisdiction over an extension of a secondary road which both enters and exits from a county park or other county conservation area at separate points. The board of supervisors of any county may expend moneys available for such roads in the same manner as the board expends such funds on other roads over which the board exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such roads shall remain in the board of supervisors of the county.

89 Acts, ch 134, §1 SF 408  
Subsection 3 amended

### 306.9 Diagonal roads—restoring and improving existing roads.

It is the policy of the state of Iowa that relocation of primary highways through cultivated land shall be avoided to the maximum extent possible. When the volume of traffic for which the road is designed or other conditions, including designation as part of the network of commercial and industrial highways, require relocation, diagonal routes shall be avoided if feasible and prudent alternatives consistent with efficient movement of traffic exist.

The improvement of two-lane roads shall utilize the existing right-of-way unless alignment or other conditions, including designation as part of the network of commercial and industrial highways, make changes imperative, and when a two-lane road is expanded to a four-lane road, the normal procedure shall be that the additional right-of-way be contiguous to the existing right-of-way unless relocated for compelling reasons, including the need to provide efficient movement of traffic on the network of commercial and industrial highways. This policy does not apply to a highway project for which the corridor has been approved by the state department of transportation and the corridor has been finalized by September 1, 1977.

It is the policy of the state of Iowa that on construction of roads classified as freeway-expressway and which are designed with four-lane divided roadways, access controls shall be limited to the minimum level necessary as determined by the department to ensure the safe and efficient movement of traffic or to comply with federal aid requirements.

Unless otherwise required by the federal law or regulation, it is also the policy of this state that road use tax fund moneys shall be used to rehabilitate or reconstruct existing roads, streets, and bridges using substantially existing right-of-way. This paragraph does not apply where additional right-of-way is needed for the construction or completion of designated interstate or city routes and highway bypasses or highways designated as part of the network of commercial and industrial highways.

89 Acts, ch 134, §2 SF 408  
Section amended

## CHAPTER 306A

## CONTROLLED-ACCESS HIGHWAYS

**306A.5 Acquisition of property and property rights.**

For the purposes of this chapter, cities and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306, may acquire private or public property rights for controlled-access facilities and service roads, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation in the same manner as such units are authorized by law to acquire such property or property rights in connection with highways and streets within their respective jurisdictions. All property rights acquired under this chapter shall be in fee simple. In connection with the acquisition of property or property rights for a controlled-access facility or portion of, or service road in connection with a controlled-access facility, the cities and highway authorities, in their discretion, may acquire an entire lot, block, or tract of land, if by so doing the interests of the public will be best served, even though the entire lot, block, or tract is not immediately needed for the right of way proper.

No access rights to any highway shall be acquired by any authority having jurisdiction and control over the highways of this state by adverse possession or prescriptive right. No action heretofore or hereafter taken by any such authority shall form the basis for any claim of adverse possession of, or prescriptive right to any access rights by any such authority.

89 Acts, ch 83, §39 SF 112  
Unnumbered paragraph 1 amended

## CHAPTER 306C

## IOWA JUNKYARD BEAUTIFICATION AND BILLBOARD CONTROL

**306C.16 Compensation.**

Compensation required by section 306C.15 or 306C.24 shall be paid for the following:

1. The taking from the owner of such advertising device of all right, title, leasehold, and interest in such advertising device.
2. The taking from the owner of real property on which an advertising device is located, of the right to erect and maintain such advertising devices upon that real property.

89 Acts, ch 317, §24 SF 531  
Unnumbered paragraph 1 amended

**306C.24 Compensation for sign removal.**

1. *Definition.* As used in this section, "off-premises advertising device" means an advertising device which does not qualify as an "on-premises sign" under rules adopted by the department pursuant to chapter 17A.

2. *Just compensation required.* Political subdivisions of this state shall not remove, take, alter, or cause to be removed, taken, or altered a lawfully erected off-premises advertising device without paying just compensation in cash to the owner of the advertising device and to the owner of the real property on which the advertising device is located, as provided in section 306C.16. The department shall not remove, take, alter or cause to be removed, taken, or altered a lawfully erected off-premises advertising device subject to control under chapter 306B or 306C without paying just compensation when required under 23 U.S.C. §131(g) to the owner of the advertising device and to the owner of the real property on which the advertising device is located, as provided in section 306C.16. For the

department, the sole intent of this section is to comply with 23 U.S.C. §131(g) and it is not the intent of this section to, in any manner, relinquish any powers of the department relating to the control and removal of advertising devices under police power.

3. *Exceptions.* This section does not apply to the removal, taking, or altering of an off-premises advertising device under any of the following conditions:

a. The device is unlawfully erected or is being maintained in violation of the provisions of section 306C.13, subsection 8, or section 306C.18.

b. The device has been abandoned or not used for a period of at least six months.

4. *Department authorization.* If required by 23 U.S.C. §131(g), the department may acquire through purchase or condemnation and shall pay just compensation as provided in section 306C.16 for off-premises advertising devices removed after July 1, 1989, through amortization by an ordinance of a political subdivision enacted prior to July 1, 1989. Notwithstanding the requirements of section 306C.14, the department may first pay just compensation from the highway beautification fund and then claim reimbursement for the federal share of the payment from the federal government.

5. *Savings clause.* If any provision of this section which relates to the department is inconsistent or conflicts with, or is not required by, 23 U.S.C. §131 to avoid the loss of federal funds, the provision shall be suspended but only to the extent necessary to eliminate the inconsistency, conflict, or requirement. If any part of this section is found to be invalid or unconstitutional, such judgment shall not affect the validity of the section as a whole or any provision or part of the section not found to be invalid or unconstitutional.

89 Acts, ch 317, §25 SF 531  
NEW section

## CHAPTER 307

### DEPARTMENT OF TRANSPORTATION

Spraying of residual pesticides along roadside by department prohibited; 89 Acts, ch 313, §4 HF 795

#### 307.21 Administrative services.

The department's administrator of administrative services shall:

1. Provide for the proper maintenance and protection of the grounds, buildings and equipment of the department, in co-operation with the department of general services.

2. Establish, supervise and maintain a system of centralized electronic data processing for the department, in co-operation with the department of general services.

3. Assist the director in preparing the departmental budget.

4. Provide centralized purchasing services for the department, in co-operation with the department of general services. The administrator shall, whenever the price is reasonably competitive and the quality intended, purchase soybean-based inks and starch-based plastics, including but not limited to starch-based garbage can liners, and shall purchase these items in accordance with the schedule established in section 18.18. The administrator shall also, in conjunction with recommendations made by the department of natural resources, purchase and use recycled printing and writing paper in accordance with the schedule established in section 18.18; shall establish a wastepaper recycling program by January 1, 1990, in accordance with recommendations made by the department of natural resources and the requirements of section 18.20; shall comply with the recycling goal, recycling schedule, and ultimate termination of purchase and use of

polystyrene products for the purpose of storing, packaging, or serving food for immediate consumption pursuant to section 455D.16; and shall, in accordance with section 18.6, require product content statements, the provision of information regarding on-site review of waste management in product bidding and contract procedures, and compliance with requirements regarding procurement specifications.

5. Assist the director in employing the professional, technical, clerical and secretarial staff for the department and maintain employee records, in cooperation with the department of personnel and provide personnel services, including but not limited to training, safety education and employee counseling.

6. Assist the director in co-ordinating the responsibilities and duties of the various divisions within the department.

7. Carry out all other general administrative duties for the department.

8. Perform such other duties and responsibilities as may be assigned by the director.

The administrator of administrative services may purchase items from the department of general services and may co-operate with the director of general services by providing centralized purchasing services for the department of general services.

89 Acts, ch 272, §24 HF 753  
Subsection 4 amended

**307.29 Collection of delinquent railway taxes—compromise.** Repealed by 89 Acts, ch 4, §3. SF 91

**307.36 Project needs—retention of property.**

It is the intent of the general assembly that not later than July 1, 1992, the state department of transportation shall dispose of all right-of-way owned by the department and not needed for projects. In determining need, the department shall consider both its five-year program requirements and its long-range, statewide corridor development needs, including the development of the network of commercial and industrial highways. The department may also act to preserve right-of-way for improvements to the network of commercial and industrial highways by acquiring options, easements, rights of first refusal, or other property interests less than fee title. In determining need based upon long-range, statewide corridor development, the department shall give careful consideration to economically depressed urban areas not served directly by the national system of interstate and defense highways.

89 Acts, ch 134, §3 SF 408  
Section amended

## CHAPTER 307A

### TRANSPORTATION COMMISSION

**307A.2 Duties.**

Said commission shall:

1. Devise and adopt standard plans of highway construction and furnish the same to the counties and provide information to the counties on the maintenance practices and policies of the department.

2. Furnish information and instruction to, answer inquiries of, and advise with, highway officers on matters of highway construction and maintenance and the reasonable cost thereof.

3. Reserved.

4. Make surveys, plans, and estimates of cost, for the elimination of danger at railroad crossings on highways, and confer with local and railroad officials with reference to elimination of the danger.

5. Assist the board of supervisors and the department general counsel in the defense of suits wherein infringement of patents, relative to highway construction, is alleged.

6. Make surveys for the improvement of highways upon or adjacent to state property when requested by the board or department in control of said lands.

7. Record all important operations of said commission and, at the time provided by law, report the same to the governor.

8. Incur no expense to the state by sending out road lecturers.

9. Order the removal or alteration of any lights or light-reflecting devices, whether on public or private property, other than railroad signals or crossing lights, located adjacent to a primary road and within three hundred feet of a railroad crossing at grade, which in any way interfere with the vision of or may be confusing to a person operating a motor vehicle on such highway in observing the approach of trains or in observing signs erected for the purpose of giving warning of such railroad crossing.

10. Order the removal or alteration of any lights or light-reflecting devices, whether on public or private property, located adjacent to a primary road and within three hundred feet of an intersection with another primary road, which in any way interfere with the vision of or may be confusing to a person operating a motor vehicle on such highway in observing the approach of other vehicles or signs erected for the purpose of giving warning of such intersection.

11. Construct, reconstruct, improve and maintain state institutional roads and state park roads as defined in section 306.3 and bridges on such roads, roads located on state fairgrounds as defined in chapter 173 and the roads and bridges located on area school property as defined in chapter 280A upon the request of the state board, department or commission which has jurisdiction over such roads. This shall be done in such manner as may be agreed upon by the commission and the state board, department or commission which has jurisdiction. The commission may contract with any county or municipality for the construction, reconstruction, improvement or maintenance of such roads and bridges. Any state park road which is an extension of either a primary or secondary highway which both enters and exits from a state park at separate points shall be constructed, reconstructed, improved and maintained as provided in section 306.4. Funds allocated from the road use tax fund for the purposes of this subsection shall be apportioned in the ratio that the needs of the state institution roads and bridges, park roads and bridges or area school roads and bridges bear to the total needs of these facilities based upon the most recent quadrennial park and institution need study. The commission shall conduct a study of the road and bridge facilities in state parks, state institutions, state fairgrounds and on area school property. The study shall evaluate the construction and maintenance needs and projected needs based upon estimated growth for each type of facility to provide a quadrennially updated standard upon which to allocate funds appropriated for the purposes of this subsection.

12. Prepare, adopt and cause to be published a long-range program for the primary road system, in conjunction with the state transportation plan adopted by the commission. Such program shall be prepared for a period of at least five years and shall be revised, brought up to date and republished at least once every year in order to have a continuing five-year program. The program shall include, insofar as such estimates can be made, an estimate of the money expected to become available during the period covered by the program and a statement of the construction, maintenance, and other work planned to be performed during such period. The commission shall conduct periodic reinspections of the primary roads

in order to revise, from time to time, its estimates of future needs to conform to the physical and service conditions of the primary roads. The commission shall annually cause to be published a sufficiency rating report showing the relative conditions of the primary roads. Before the last day of December of each year, the commission shall adopt and cause to be published from its long-range program, a plan of improvements to be accomplished during the next calendar year. This annual program shall list definite projects in order of urgency and shall include a reasonable year's work with the funds estimated to be available. The annual program shall be final and followed by the commission in the next year except that deviations may be made in case of disaster or other unforeseen emergencies or difficulties. The relative urgency of the proposed improvements shall be determined by a consideration of the physical condition, safety, and service characteristics of the various primary roads.

13. The commission shall adopt such rules and regulations in accordance with the provisions of chapter 17A as it may deem necessary to transact its business and for the administration and exercise of its powers and duties.

14. For the four-year period beginning July 1, 1979, and for each subsequent four-year period, prepare, adopt and cause to be published the results of a study of all roads and streets in the state. The study shall be so designed to investigate present deficiencies and future twenty-year maintenance and construction needs of the roads and the ability of each applicable authority to meet the needs for the planning, construction, repair and maintenance of roads within their jurisdiction. The commission may gather information necessary to complete this study and shall be furnished assistance from any state agency as necessary to prepare, update and publish a report to be referred to as the "quadrennial need study" for the purposes of this chapter and chapter 312. The commission shall report the results of the study to the general assembly by January 1 of the last year in each four-year period and the study shall take effect the following July 1. This subsection does not preclude the commission from updating the quadrennial need study when necessary to reflect changes in road and street needs in the state.

15. Identify, within the primary road system, a network of commercial and industrial highways in accordance with section 313.2A. The improvement of this network shall be considered in the development of the long-range program and plan of improvements under this section.

89 Acts, ch 134, §4 SF 408

Subsection 14, former unnumbered paragraph 2 amended to be subsection 15

## CHAPTER 307B

### RAILWAY FINANCE AUTHORITY

#### 307B.9 Obligations.

Except as provided in this chapter, all obligations are payable solely out of the pledged receipts as designated in the bond proceedings. Tax funds which the authority receives from a political subdivision of the state shall not be pledged for payment of the obligations. Except for those tax funds deposited in the special railroad facility fund as provided in sections 307B.23, subsection 3, 435.9 and 324A.8, the state shall not appropriate tax funds, directly or indirectly, to the authority for the purpose of payment of obligations of the authority. Obligations shall be authorized by resolution of the board and bond proceedings shall provide for the purpose of the obligations, the principal amount, the principal maturity or maturities, not exceeding twenty-five years from the date of issuance, the interest rate or rates or the maximum interest rate, the date of the obligations and the dates of payment of interest on them, their denomination, and the establishment within or without the state of a place or places of payment of bond service charges.

As much as is practicable within the legal and fiscal limitations inherent in bond issuance, a portion of the bonds shall be issued in denominations of five thousand dollars and smaller, in order to allow smaller investors in the state to purchase the bonds.

The purpose of the obligations may be stated in the bond proceedings in terms describing the general purpose or purposes to be served.

The bond proceedings shall also provide, subject to other applicable bond proceedings, for the pledge of all or such part, as the authority may determine, of the pledged receipts to the payment of bond service charges, which pledges may be made either prior or subordinate to other expenses, claims or payments, and may be made to secure the obligations on a parity with obligations issued at other times, if and to the extent provided in the bond proceedings. The pledged receipts so pledged and received by the authority are immediately subject to the lien of the pledge without physical delivery or further act, and the pledge of the pledged receipts is effective and these moneys may be applied to the purposes for which pledged without necessity for an Act of appropriation. Every pledge and every covenant and agreement with respect to a pledge made in the bond proceedings may be extended to the benefit of the owners and holders of obligations authorized by this chapter, and to any trustee for owners and holders, for the further security of the payment of the bond service charges.

The authority shall issue a prospectus or official statement in connection with the offering of obligations. Obligations may be issued in coupon or in registered form, or both. Provision may be made for the registration of obligations with coupons attached as to principal alone or as to both principal and interest, their exchange for obligations so registered, and for the conversion or reconversion into obligations with coupons attached of any obligations registered as to both principal and interest, and for reasonable charges for registration, exchange, conversion and reconversion. Obligations may be sold at public or private sale at the price, in the manner, and at the time determined by the governing board. Chapter 75 and sections 23.12 to 23.16 do not apply to obligations issued under this chapter. All obligations are negotiable instruments.

The bond proceedings may contain additional provisions as to:

1. The redemption of obligations prior to maturity at the option of the authority at the price and under the terms and conditions provided in the bond proceedings.
  2. Other terms of the obligation.
  3. Limitations on the issuance of additional obligations.
  4. The terms of any trust agreement or indenture securing the obligations or under which the obligations may be issued.
  5. The deposit, investment and application of special funds and the safeguarding of moneys on hand or on deposit, without regard to chapter 453, subject to this chapter, with respect to particular funds or moneys; provided that any bank or trust company which acts as depository of any moneys in the special funds may furnish indemnifying bonds or may pledge the securities as required by the authority.
  6. The provisions of the bond proceedings which are binding upon the officer, board, commission, authority, agency, department or other person or body which has the authority under law to take actions as necessary to perform all or any part of the duty required by a provision.
  7. Any provision which may be made in a trust agreement or indenture.
  8. Additional agreements with the holders of the obligations, or the trustee for the holders, relating to the obligations or the security for the obligations.
- Before the authority can incur an obligation for the acquisition or purchase of railway facilities under this chapter, the proceeds of which are to be contributed, loaned, or otherwise provided to a partnership of which the authority is a partner,

the other partners of the partnership must pledge to the partnership in the aggregate an amount equal to at least twenty percent of the amount of the obligations to be incurred for the acquisition or purchase.

89 Acts, ch 4, §1 SF 91  
Unnumbered paragraphs 1 through 4 amended and divided

### 307B.23 Special railroad facility fund.

1. There is created in the office of the state treasurer a "*special railroad facility fund*". This fund shall include moneys credited to this fund under\* and other moneys which by law may be credited to the special railroad facility fund. The moneys in the special railroad facility fund are appropriated to and for the purposes of the authority as provided in this chapter. The funds in the special railroad facility fund shall not be considered as a part of the general fund of the state, are not subject to appropriation for any other purpose by the general assembly, and in determining a general fund balance shall not be included in the general fund of the state but shall remain in the special railroad facility fund to be used for the purposes set forth in this section. The treasurer of state shall act as custodian of the fund and disburse amounts contained in it as directed by the authority. The treasurer of state is authorized to invest the funds deposited in the special railroad facility fund at the direction of the authority and subject to any limitations contained in the bond proceedings. The income from the investment shall be credited to and deposited in the special railroad facility fund. This fund shall be administered by the authority and may be used to purchase or upgrade railroad right-of-way and trackage facilities or to purchase general or limited partnership interests in a partnership formed to purchase, upgrade, or operate railroad right-of-way and trackage facilities, to pay or secure obligations issued by the authority, to pay obligations, judgments, or debts for which the authority becomes liable in its capacity as a general partner, or for any other use authorized under this chapter. The fund may also be used to purchase or upgrade railroad right-of-way and trackage facilities for the development of railroad passenger tourism.

2. Moneys received from repayment from heartland rail corporation as provided in 1983 Iowa Acts, chapter 198, section 32, as amended by 1987 Iowa Acts, chapter 232, section 28, and 1988 Iowa Acts, chapter 1211, section 6, shall be deposited in a separate account within the special railroad facility fund and shall be used by the authority only for debt service or rehabilitation on branch rail lines whose total projected traffic is at least fifty percent agricultural products.

89 Acts, ch 4, §2 SF 91; 89 Acts, ch 6, §1, 2 SF 113  
\*See Code editor's note  
Subsection 1 amended  
Subsection 2 stricken and former subsection 3 renumbered as 2

## CHAPTER 307D

### IOWA HIGHWAY RESEARCH BOARD

#### 307D.1 Definitions.

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

1. "*Board*" means the Iowa highway research board of the state department of transportation.
2. "*Department*" means the state department of transportation.

89 Acts, ch 293, §1 SF 524  
NEW section

### 307D.2 Iowa highway research board.

There is created the Iowa highway research board for the purpose of providing for the ongoing research of materials, design, and maintenance of Iowa's highways as provided in this chapter.

89 Acts, ch 293, §2 SF 524  
NEW section

### 307D.3 Duties and objectives.

The duties and objectives of the board are:

1. To supervise and coordinate research and development with the United States department of transportation and all other transportation research organizations. The research shall include, but not be limited to, the study of standards for road and bridge construction, design, and maintenance, and the development of new materials.
2. To acquire a knowledge of research and development needs of Iowa's roads and transportation systems.
3. To act as a clearinghouse for suggestions, problem statements, and proposals for highway research and development.
4. To make recommendations to the general assembly, the governor, Iowa's congressional delegation, the department and the United States department of transportation based upon research conducted and supervised by the board.
5. To monitor the progress of recommended projects and periodically evaluate each project's success and impact upon Iowa's highways.
6. To periodically report and publish the results of research conducted by the board.
7. To annually report by December 15 of each year to the general assembly and the governor regarding the board's activities and research.

89 Acts, ch 293, §3 SF 524  
NEW section

### 307D.4 Governing board—staff.

The powers of the board shall be vested in and exercised by a governing board consisting of fourteen members appointed by the governor, subject to confirmation by the senate in accordance with section 2.32, and four members of the general assembly. The membership shall be qualified as follows:

1. Three members shall be county engineers or members of county boards of supervisors.
2. Three members shall be city engineers.
3. Three members shall be employed by the department in the administration of highways.
4. Five members shall be university representatives, two from the state university of Iowa, two from Iowa state university of science and technology, and one from the university of northern Iowa. One of the members from both the state university of Iowa and Iowa state university of science and technology shall be faculty members of the respective institution's engineering college; the other members shall be faculty members of any college or department excluding the engineering college of the respective institution.
5. Four members shall be members of the general assembly, one to be appointed by the speaker of the house from the membership of the house, one to be appointed by the minority leader of the house from the membership of the house, one to be appointed by the majority leader of the senate from the membership of the senate, and one to be appointed by the minority leader of the senate from the membership of the senate.

No more than a simple majority of the members of the board shall be of the same political party or same gender as provided in sections 69.16 and 69.16A.

89 Acts, ch 293, §4 SF 524  
NEW section

**307D.5 Terms of office—officers selected.**

The board shall be appointed for staggered terms of four years beginning and ending as provided in section 69.19. The legislative members of the board shall be appointed to staggered four-year terms of office, two of which shall expire every two years. A legislative member's tenure on the board is terminated if the board member ceases to be a member of the general assembly. Vacancies in the membership shall be filled for the unexpired term in the same manner as the original appointment. The board shall annually select from its membership a chairperson and a vice chairperson by a majority vote of the total membership. A member of the department, as selected by the board, shall serve as secretary.

89 Acts, ch 293, §5 SF 524  
NEW section

**307D.6 Meetings of the board—expenses.**

The board shall meet at least six times each year and shall hold special meetings on the call of the chairperson. 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. Members representing political subdivisions who are not elected officials shall receive forty dollars per diem and necessary and actual expenses incurred in the performance of their duties. 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.

89 Acts, ch 293, §6 SF 524  
NEW section

**307D.7 Additional authority.**

The board may:

1. Do all things necessary, proper and expedient in executing and achieving the duties and objectives assigned to the board in this chapter.
2. Hold public hearings.
3. Enter into contracts, within the limits of funds made available to the board, with individuals, organizations, and institutions for services furthering the objectives of the board.
4. Accept grants of money, property, or other resources from the federal government or any other source, and upon its own order use the money, property, or other resources to accomplish the duties and objectives of the board.

89 Acts, ch 293, §7 SF 524  
NEW section

## CHAPTER 310

### FARM-TO-MARKET ROADS

**310.10 Farm-to-market road system defined.**

The farm-to-market road system shall embrace those roads as defined in section 306.3, subsection 5. However, a road which is classified as being part of the arterial or arterial connector system under chapter 306 but whose jurisdiction still vests in the county in which it is located, shall be deemed to be part of the farm-to-market road system until the time the jurisdiction of the road is transferred to the department.

89 Acts, ch 293, §8 SF 524  
Section amended

## CHAPTER 312

## ROAD USE TAX FUND

**312.1 Fund created.**

There is hereby created, in the state treasury, a road use tax fund. Said road use tax fund shall embrace and include:

1. All the net proceeds of the registration of motor vehicles under chapter 321.
2. All the net proceeds of the motor vehicle fuel tax or license fees under chapter 324.
3. All revenue derived from the use tax, under chapter 423 on motor vehicles, trailers, and motor vehicle accessories and equipment, as same may be collected as provided by section 423.7.

4. Any other funds which may by law be credited to the road use tax fund.

Notwithstanding section 453.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the road use tax fund and the funds to which moneys from the road use tax fund are credited shall be credited to the road use tax fund.

89 Acts, ch 293, §9 SF 524

Unnumbered paragraph 2 (at end of section) amended

**312.2 Allocations from fund.**

The treasurer of the state shall, on the first day of each month, credit all road use tax funds which have been received by the treasurer, to the primary road fund, the secondary road fund of the counties, the farm-to-market road fund, and the street construction fund of cities in the following manner and amounts:

1. To the primary road fund, forty-seven and one-half percent.
2. To the secondary road fund of the counties, twenty-four and one-half percent.
3. To the farm-to-market road fund, eight percent.
4. To the street construction fund of the cities, twenty percent.
5. The treasurer of state shall before making the above allotments credit annually to the highway grade crossing safety fund the sum of seven hundred thousand dollars, credit annually from the road use tax fund the sum of nine hundred thousand dollars to the highway railroad grade crossing surface repair fund, credit monthly to the primary road fund the dollars yielded from an allotment of sixty-five hundredths of one percent of all road use tax funds for the express purpose of carrying out subsection 11 of section 307A.2, section 313.4, subsection 2, and section 307.45, and credit annually to the primary road fund the sum of five hundred thousand dollars to be used for paying expenses incurred by the state department of transportation other than expenses incurred for extensions of primary roads in cities. All unobligated funds provided by this subsection, except those funds credited to the highway grade crossing safety fund, shall at the end of each year revert to the road use tax fund. Funds in the highway grade crossing safety fund shall not revert to the road use tax fund except to the extent they exceed five hundred thousand dollars at the end of any biennium. The cost of each highway railroad grade crossing repair project shall be allocated in the following manner:
  - a. Twenty percent of the project cost shall be paid by the railroad company.
  - b. Twenty percent of the project cost shall be paid by the highway authority having jurisdiction of the road crossing the railroad.
  - c. Sixty percent of the project cost shall be paid from the highway railroad grade crossing surface repair fund.
6. The treasurer of state shall before making the allotments provided for in this section credit monthly to the state department of transportation funds sufficient in amount to pay the costs of purchasing certificate of title and registration forms, and supplies and materials and for the cost of prison labor used in manufacturing

motor vehicle registration plates, decalomania emblems, and validation stickers at the prison industries.

7. The treasurer of state, before making the allotments provided in this section, shall credit annually to the primary road fund from the road use tax fund the sum of seven million one hundred thousand dollars.

8. The treasurer of state, before making any allotments to counties under this section, shall reduce the allotment to a county for the secondary road fund by the amount by which the total funds that the county transferred or provided during the prior fiscal year under section 331.429, subsection 1, paragraphs "a", "b", "d", and "e", are less than seventy-five percent of the 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 director of the department of management upon request by the treasurer of state.

9. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the living roadway trust fund created under section 314.21 one hundred fifty thousand dollars from the road use tax fund.

10. The treasurer of state, before making the 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.

11. 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.

12. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the living roadway trust fund created under section 314.21 one hundred thousand dollars from the road use tax fund.

13. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the department of justice from the road use tax fund an amount equal to twenty-five cents on each title issuance for motor vehicle fraud law enforcement and prosecution purposes including, but not limited to, the enforcement of state and federal odometer laws.

14. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the revitalize Iowa's sound economy fund, created under section 315.2, the revenue accruing to the road use tax fund in the amount equal to the revenues collected under each of the following:

a. From the excise tax on motor fuel and special fuel imposed under the tax rate of section 324.3 except aviation gasoline, the amount of excise tax collected from one and eleven-twentieths cents per gallon.

b. From the excise tax on special fuel for diesel engines, the amount of excise tax collected from one and eleven-twentieths cents per gallon.

14A. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the secondary road

fund the revenue accruing to the road use tax fund in the amount equal to the revenues collected under each of the following:

a. From the excise tax on motor fuel and special fuel imposed under the tax rate of section 324.3, except aviation gasoline, the amount of excise tax collected from nine-twentieths cent per gallon.

b. From the excise tax on special fuel for diesel engines, the amount of excise tax collected from nine-twentieths cent per gallon.

15. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the public transit assistance fund, created under section 601J.6, from revenue credited to the road use tax fund under section 423.24, subsection 1, paragraph "b", an amount equal to one-twentieth of the revenue credited to the road use tax fund under section 423.24, subsection 1, paragraph "b".

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 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.

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 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.

18. The treasurer of state, before making the allotments provided for in this section, shall credit annually from the revenue to be credited to the road use tax fund under section 423.24, subsection 1, paragraph "b", the sum of one million dollars to the state department of transportation for the purpose of acquiring, constructing, and improving recreational trails within the state. Unobligated portions of this allotment shall remain available to the state department of transportation for the purposes for which the funds are originally allocated. The state department of transportation shall adopt rules under chapter 17A to establish procedures for the expenditure of the funds allotted under this subsection.

19. a. The treasurer of state, before making the allotments provided for in this section, for the fiscal year beginning July 1, 1990, and each succeeding fiscal year, credit from the road use tax fund two million dollars to the county bridge construction fund, which is hereby created. Moneys credited to the county bridge construction fund shall be allocated to counties by the department for bridge construction and reconstruction based on needs in accordance with rules adopted by the department.

b. The treasurer of state, before making the allotments provided for in this section, for the fiscal year beginning July 1, 1990, and each succeeding fiscal year, credit from the road use tax fund five hundred thousand dollars to the city bridge construction fund, which is hereby created. Moneys credited to the city bridge construction fund shall be allocated to cities by the department for bridge construction and reconstruction based on needs in accordance with rules adopted by the department.

20. Subsections 1 through 4 do not apply during the fiscal period beginning July 1, 1989, through June 30, 1991. For the fiscal year beginning July 1, 1989, and the succeeding fiscal year, the treasurer of state, after making the other allotments provided for in this section, shall credit:

a. To the primary road fund, two hundred eighty-five million dollars less the combined amount of moneys credited in the fiscal year to the primary road fund

under subsections 7 and 11 and moneys credited for the use of the department on primary road projects under section 315.4, subsection 1.

b. To the secondary road fund of the counties, one hundred forty-eight million dollars less the combined amount of moneys credited in the fiscal year to the secondary road fund under subsection 14A and moneys credited for the use of counties on secondary road projects under section 315.4, subsection 2.

c. To the farm-to-market road fund, forty-eight million dollars less the amount of moneys credited to the farm-to-market road fund under subsection 11.

d. To the street construction fund of the cities, one hundred twelve million dollars less the amount of moneys credited for the use of cities on city street projects under section 315.4, subsection 3.

e. If in a fiscal year there are insufficient moneys credited to the road use tax fund to fully credit to the respective funds the full amount appropriated under paragraphs "a" through "d", the treasurer of state shall reduce the amounts credited under paragraphs "a" through "d" by the amount of the shortfall among the respective funds in proportion to the allocation among the funds under subsections 1 through 4. Similarly, if in a fiscal year there are moneys credited to the road use tax fund in excess of those necessary to fully credit the respective funds with the amounts appropriated under paragraphs "a" through "d", the treasurer of state shall increase the amounts credited under paragraphs "a" through "d" by the amount of the additional available moneys among the respective funds in proportion to the allocation among the funds under subsections 1 through 4.

This subsection is repealed effective July 1, 1991.

89 Acts, ch 246, §1, 2 HF 723; 89 Acts, ch 293, §10-13 SF 524

Legislative intent; 89 Acts, ch 293, §19 SF 524

Subsections 1-4, 9, 12 and 14 amended

NEW subsections 14A, 19 and 20

### 312.3A Street research fund.

Prior to the allocation to the cities under section 312.3, subsection 2, the department is authorized to set aside each year two hundred thousand dollars from the street construction fund of the cities in a fund to be known as the street research fund. The street research fund shall be used by the department solely for the purpose of financing engineering studies and research projects which have as their objective the more efficient use of funds and materials that are available for the construction and maintenance of city streets, including city street bridges and culverts. The research projects and engineering studies authorized shall be conducted in cooperation with the city engineers. On or before January 31 each year the department shall file a report with the governor, state transportation commission, city engineers, chief clerk of the house of representatives, and secretary of the senate showing the work accomplished and projects undertaken under this section.

89 Acts, ch 293, §14 SF 524

NEW section

### 312.16 Definitions.

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

1. "Department" means the state department of transportation.
2. "Fiscal year" means the period of twelve months beginning on July 1 and ending on June 30.

89 Acts, ch 293, §15 SF 524

Section amended

## CHAPTER 313

## IMPROVEMENT OF PRIMARY ROADS

**313.2A Commercial and industrial highways.**

1. *Purpose.* It is the purpose of this section to enhance opportunities for the development and diversification of the state's economy through the identification and improvement of a network of commercial and industrial highways. The network shall consist of interconnected routes which provide long distance route continuity. The purpose of this highway network shall be to improve the flow of commerce; to make travel more convenient, safe, and efficient; and to better connect Iowa with regional, national, and international markets. The commission shall concentrate a major portion of its annual construction budget on this network of commercial and industrial highways. In order to ensure the greatest possible availability of funds for the improvement of the network, primary highway funds shall not be spent beyond continuing maintenance for improvements to route segments that will be bypassed by the relocation of portions of the commercial and industrial highway network except as provided in subsection 4.

2. *Network selection.* The commission shall identify, within the primary road system, a network of commercial and industrial highways. The commission shall consider all of the following factors in the identification of this network:

a. The connection by the most direct routes feasible of major urban areas and regions of the state to each other and to the national system of interstate and defense highways and priority routes in adjacent states.

b. The existence of high volumes of total traffic and commercial traffic.

c. Long distance traffic movements.

d. Area coverage and balance of spacing with service to major growth centers within the state.

The network of commercial and industrial highways shall not exceed two thousand five hundred miles including municipal extensions of these highways.

3. *Standards.* The department shall establish standards pertaining to the specific location, design, and access control for each segment of the commercial and industrial highways.

4. *Jurisdictional transfers.* When the construction, reconstruction, relocation, or other improvement to the network of commercial and industrial highways results in a change in the function of a bypassed primary road, municipal extension of a primary road, or other connecting road, the department, upon approval of the state transportation commission, shall transfer jurisdiction of the road to the city or county as appropriate. Before the transfer takes place the department shall place the road and any structures on the road in good repair for continued maintenance or provide for the transfer of money to the appropriate jurisdiction sufficient for the repairs to the road and any structures on the road. If the department cannot come to agreement with the jurisdiction to which the road is transferred as to the necessary repairs, they shall contract with an organization in this state to provide mediation services. The costs of the mediation services shall be equally allocated between the parties. If after submitting to mediation the parties still cannot come to agreement as to the necessary repairs, the mediator shall sign a statement that the parties did not reach an agreement, and the parties shall then submit the matter for binding arbitration to a mutually agreed-upon third party. If the parties cannot agree upon a third-party arbitrator, they shall submit the matter to an arbitrator selected under the rules of the American arbitration association. Section 306.43 does not apply to transfers of jurisdiction under this subsection.

### 313.21 Primary extension improvements in cities.

The department, upon consultation with the council, may construct, reconstruct, improve, and maintain extensions of the primary road system within any city, including the construction, reconstruction, and improvement of storm sewers and electrical traffic control devices reasonably incident and necessary thereto. However, the improvement, exclusive of storm sewers, shall not exceed in width that of the primary road system and the amount of funds expended in any one year shall not exceed thirty-five percent of the primary road construction fund.

The department shall consult with the council to consider the proposed improvement in its relationship to municipal improvements such as sewers, water lines, sidewalks, and other public improvements, and the establishment or reestablishment of street grades. The location of the primary road extensions and the location, design, and degree of access control for improvements to them shall be determined by the department.

89 Acts, ch 134, §6 SF 408  
Section amended

### 313.42 Definitions.

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

1. "*Commission*" means the state transportation commission.
2. "*Department*" means the state department of transportation.

89 Acts, ch 134, §7 SF 408  
Section amended

## CHAPTER 314

### GENERAL ADMINISTRATIVE PROVISIONS FOR HIGHWAYS

#### 314.5 Extensions in certain cities.

The agency in control of a secondary road, subject to approval of the council, may eliminate danger at railroad crossings and construct, reconstruct, improve, repair, and maintain any road or street which is an extension of the secondary road within a city. However, this authority does not apply to the extensions of secondary roads located in cities over twenty-five hundred population, where the houses or business houses average less than two hundred feet apart.

The phrase "subject to the approval of the council" as it appears in this section, shall be construed as authorizing the council to consider said proposed improvement only in its relationship to municipal improvements such as sewers, water lines, establishing grades, change of established street grades, sidewalks and other public improvements. The locations of such road extensions shall be determined by the agency in control of such road or road system.

89 Acts, ch 134, §8 SF 408  
Unnumbered paragraph 1 amended

#### 314.13 Definitions.

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

1. "*Agency*" means any governmental body which exercises jurisdiction over any road as provided by law.
2. "*Committee*" means the integrated roadside vegetation management technical advisory committee created in section 314.22.
3. "*Coordinator*" means the integrated roadside vegetation management coordinator.
4. "*Department*" means the state department of transportation.

89 Acts, ch 246, §3 HF 723  
NEW subsections 3 and 4, renumbered 2 and 3 to alphabetize

### 314.20 Utility easements on highway right-of-way.

The department shall develop an accommodation plan for the longitudinal utility use of freeway right-of-way, in consultation with the utilities board. The plan shall be consistent with the rules of the federal highway administration of the United States department of transportation and shall be submitted to the federal highway administration for its approval by January 1, 1989. In developing the plan, the department shall provide for extended payment and lease agreements to provide continuous funding for the living roadway trust fund. The plan shall provide for charges for the use of the right-of-way and all moneys collected shall be credited to the living roadway trust fund established under section 314.21.

89 Acts, ch 246, §4 HF 723  
Section amended

### 314.21 Living roadway trust fund.

1. The living roadway trust fund is created in the office of the treasurer of state. The moneys in this fund shall be used exclusively for the development and implementation of integrated roadside vegetation plans. Except as provided in subsections 2 and 3, the moneys shall only be expended for areas on or adjacent to road, street, and highway right-of-ways. The state department of transportation in consultation with the department of natural resources shall establish standards relating to the type of projects available for assistance. For the fiscal period beginning July 1, 1988, and ending March 31, 1990, the moneys in the fund shall be expended as follows: fifty-six percent on state department of transportation projects; thirty percent on county projects; and fourteen percent on city projects.

A city or county which has a project which qualifies for the use of these funds shall submit a request for the funds to the state department of transportation. A city or county may, at its option, apply moneys allocated for use on city or county projects under this subsection toward qualifying projects on the primary system. The state department of transportation in consultation with the department of natural resources shall determine which projects qualify for the funds and which projects shall be funded if the requests for the funds exceed the availability of the funds. In ranking applications for funds, the department shall consider the proportion of political subdivision matching funds to be provided, if any, and the proportion of private contributions to be provided, if any. In considering the proportion of political subdivision matching funds provided, the department shall consider only those moneys which are in addition to those which the political subdivision has historically provided toward such projects. Funds allocated to the cities, the counties, and the department which are not programmed by the end of each fiscal year shall be available for redistribution to any eligible applicant regardless of the original allocation of funds. Such funds shall be awarded for eligible projects based upon their merit in meeting the program objectives established by the department under section 314.22. The department shall submit a report of all projects funded in the previous fiscal year to the governor and to the general assembly on January 15 of each year.

Beginning April 1, 1990, the moneys in the living roadway trust fund shall be allocated between the state, counties, and cities in the same proportion that the road use tax funds are allocated under section 312.2, subsections 1, 2, 3, and 4. However, after April 1, 1990, a city or county shall not be eligible to receive moneys from the living roadway trust fund unless the city or county has an integrated roadside vegetation management plan in place consistent with the objectives in section 314.22.

2. a. The department may authorize projects which provide grants or loans to local governments and organizations which are developing community entryway enhancement and other planting demonstration projects. Planning, public education, installation, and initial maintenance planning and development may be

determined by the department to be eligible activities for funding under this paragraph. Projects approved under this paragraph require a local match or contribution toward the overall project cost.

b. The department may authorize projects which provide grants or loans to local governments for the purchase of specialized equipment and special staff training for the establishment of alternative forms of roadside vegetation. Projects approved under this paragraph require a local match or contribution toward the overall project cost.

c. The department, in order to create greater visual effect, shall investigate alternatives for concentrating plantings at strategic locations to gain a greater visual impact and appeal as well as stronger scenic value. Equal attention shall be given to providing safe and effective habitats for wildlife which can coexist with highways.

d. The department may authorize projects which provide grants or loans to local jurisdictions for increased protection through the use of easements, fee title acquisition, covenants, zoning ordinances, or other provisions for protection of vegetation and desirable environment adjacent to the right-of-way. Off-right-of-way projects shall emphasize vegetation protection or enhancement, scenic and wildlife values, erosion control and enhancement of vegetation management projects within the right-of-ways.

3. a. Moneys allocated to the state under subsection 1 shall be expended as follows:

(1) Fifty thousand dollars annually to the department for the services of the integrated roadside vegetation management coordinator and support.

(2) One hundred thousand dollars annually for education programs, research and demonstration projects, and vegetation inventories and strategies, under section 314.22, subsections 5, 6, and 8.

(3) All remaining moneys for the gateways program under section 314.22, subsection 7.

b. Moneys allocated to the counties under subsection 1 shall be expended as follows:

(1) For the fiscal period beginning July 1, 1989, and ending June 30, 1991, fifty thousand dollars in each fiscal year to the university of northern Iowa to maintain the position of the state roadside specialist and to continue its integrated roadside vegetation management pilot program providing research, education, training, and technical assistance.

(2) All remaining money for grants or loans under subsection 2, paragraph "a".

c. Moneys allocated to the cities shall be expended for grants or loans under subsection 2, paragraph "a".

89 Acts, ch 246, §5 HF 723; 89 Acts, ch 317, §28 SF 531  
 Transportation department to report by January 15, 1992, on living roadway trust fund's allocation of moneys and recommended changes in allocations; 89 Acts, ch 246, §12  
 Section amended  
 Subsection 3 struck and rewritten

### **314.22 Integrated roadside vegetation management.**

1. *Objectives.* It is declared to be in the general public welfare of Iowa and a highway purpose for the vegetation of Iowa's roadsides to be preserved, planted, and maintained to be safe, visually interesting, ecologically integrated, and useful for many purposes. The state department of transportation shall provide an integrated roadside vegetation management plan and program which shall be designed to accomplish all of the following:

a. Maintain a safe travel environment.

b. Serve a variety of public purposes including erosion control, wildlife habitat, climate control, scenic qualities, weed control, utility easements, recreation uses, and sustenance of water quality.

c. Be based on a systematic assessment of conditions existing in roadsides, preservation of valuable vegetation and habitats in the area, and the adoption of a comprehensive plan and strategies for cost-effective maintenance and vegetation planting.

d. Emphasize the establishment of adaptable and long-lived vegetation, often native species, matched to the unique environment found in and adjacent to the roadside.

e. Incorporate integrated management practices for the long-term control of damaging insect populations, weeds, and invader plant species.

f. Build upon a public education program allowing input from adjacent landowners and the general public.

g. Accelerate efforts toward increasing and expanding the effectiveness of plantings to reduce wind-induced and water-induced soil erosion and to increase deposition of snow in desired locations.

h. Incorporate integrated roadside vegetation management with other state agency planning and program activities including the recreation trails program, scenic highways, open space, and tourism development efforts. Agencies should annually report their progress in this area to the general assembly.

2. *Counties may adopt plans.* A county may adopt an integrated roadside vegetation management plan consistent with the integrated roadside vegetation management plan adopted by the department under subsection 1.

3. *Integrated roadside vegetation management technical advisory committee.*

a. The director of the department shall appoint members to an integrated roadside vegetation management technical advisory committee which is created to provide advice on the development and implementation of a statewide integrated roadside vegetation management plan and program and related projects. The department shall report annually in January to the general assembly regarding its activities and those of the committee. Activities of the committee may include, but are not limited to, providing advice and assistance in the following areas:

- (1) Research efforts.
- (2) Demonstration projects.
- (3) Education and orientation efforts for property owners, public officials, and the general public.
- (4) Activities of the integrated roadside vegetation management coordinator for integrated roadside vegetation management.
- (5) Reviewing applications for funding assistance.
- (6) Securing funding for research and demonstrations.
- (7) Determining needs for revising the state weed law and other applicable Code sections.
- (8) Liaison with the Iowa state association of counties, the league of Iowa municipalities, and other organizations for integrated roadside vegetation management purposes.

b. The director may appoint any number of persons to the committee but, at a minimum, the committee shall consist of all of the following:

- (1) One member representing the utility industry.
- (2) One member from the Iowa academy of sciences.
- (3) One member representing county government.
- (4) One member representing city government.
- (5) Two members representing the private sector including community interest groups.
- (6) One member representing soil conservation interests.
- (7) One member representing the department of natural resources.
- (8) One member representing county conservation boards.

Members of the committee shall serve without compensation, but may be reimbursed for allowable expenses from the living roadway trust fund created under section 314.21. No more than a simple majority of the members of the committee shall be of the same gender as provided in section 69.16A. The director of the department shall appoint the chair of the committee and shall establish a minimum schedule of meetings for the committee.

4. *Integrated roadside vegetation management coordinator.* The integrated roadside vegetation management coordinator shall administer the department's integrated roadside vegetation management plan and program. The department may create the position of integrated roadside vegetation management coordinator within the department or may contract for the services of the coordinator. The duties of the coordinator include, but are not limited to, the following:

- a. Conducting education and awareness programs.
- b. Providing technical advice to the department and the department of natural resources, counties, and cities.
- c. Conducting demonstration projects.
- d. Coordinating inventory and implementation activities.
- e. Providing assistance to local community-based groups for undertaking community entryway projects.
- f. Being a clearinghouse for information from Iowa projects as well as from other states.
- g. Periodically distributing information related to integrated roadside vegetation management.
- h. General coordination of research efforts.
- i. Other duties assigned by the director of transportation.

5. *Education programs.* The department shall develop educational programs and provide educational materials for the general public, landowners, governmental employees, and board members as part of its program for integrated roadside vegetation management. The educational program shall provide all of the following:

a. The development of public service announcements and television programs about the importance of roadside vegetation in Iowa.

b. The expansion of existing training sessions and educational curriculum materials for county weed commissioners, government contract sprayers, maintenance staff, and others to include coverage of integrated roadside management topics such as basic plant species identification, vegetation preservation, vegetation inventory techniques, vegetation management and planning procedures, planting techniques, maintenance, communication, and public relations. County and municipal engineers, public works staffs, planning and zoning representatives, parks and habitat managers, and others should be encouraged to participate.

c. The conducting of statewide and regional conferences and seminars about integrated roadside vegetation management, community entryways, scenic values of land adjoining roadsides, and other topics relating to roadside vegetation.

d. The preparation, display, and distribution of a variety of public relations material, in order to better inform and educate the traveling public on roadside vegetation management activities. The public relations material shall inform motorists of a variety of roadside vegetation issues including all of the following:

- (1) Benefits of various types of roadside vegetation.
- (2) Long-term results expected from planting and maintenance practices.
- (3) Purposes for short-term disturbances in the roadside landscapes.
- (4) Interesting aspects of the Iowa landscape and individual landscape regions.
- (5) Other aspects relating to wildlife and soil erosion.

e. Preparation and distribution of educational material designed to inform adjoining property owners, farm operators, and others of the importance of

roadside vegetation and their responsibilities of proper stewardship of that vegetation resource.

6. *Research and demonstration projects.* The department, as part of its plan to provide integrated roadside vegetation management, shall conduct research and feasibility studies including demonstration projects of different kinds at a variety of locations around the state. The research and feasibility studies may be conducted in, but are not limited to, any of the following areas:

a. Cost effectiveness or comparison of planting, establishing and maintaining alternative or warm-season, native grass and forb roadside vegetation and traditional cool-season nonnative vegetation.

b. Identification of the relationship that roadsides and roadside vegetation have to maintaining water quality, through drainage wells, sediment and pollutant collection and filtration, and other means.

c. Impacts of burning as an alternative vegetation management tool on all categories of roads.

d. Techniques for more quickly establishing erosion control and permanent vegetative cover on recently disturbed ground as well as interplanting native species in existing vegetative cover.

e. Effectiveness of techniques for reduced or selected use of herbicides to control weeds.

f. Identification of cross section and slope steepness design standards which provide for motorist safety as well as for improved establishment, maintenance, and replacement of different types of vegetation.

g. Identification of a uniform inventory and assessment technique which could be used by many counties in establishing integrated roadside management programs.

h. Equipment innovations for seeding and harvesting grasses in difficult terrain settings, roadway ditches, and fore-slopes and back-slopes.

i. Identification of the perceptions of motorists and landowners to various types of roadside vegetation and configuration of plantings.

j. Market or economic feasibility studies for native seed, forb, and woody plant production and propagation.

k. Impacts of vegetation modifications on increasing or decreasing wildlife populations in rural and urban areas.

l. Effects of vegetation on the number and location of wildlife road-kills in rural and urban areas.

m. Costs to the public for improper off-site resource management adjacent to roadsides.

n. Advantages, disadvantages, and techniques of establishing pedestrian access adjacent to highways and their impacts on vegetation management.

a. Identification of alternative techniques for snow catchment on farmland adjacent to roadsides.

7. *Gateways program.* The department shall develop a gateways program to provide meaningful visual impacts including major new plantings at the important highway entry points to the state and its communities. Substantial and distinctive plantings shall also be designed and installed at these points. Creative and artistic design solutions shall be sought for these improvements. Communications about these projects shall be provided to local groups in order to build community involvement, support, and understanding of their importance. Consideration shall be given to a requirement that gateways projects produce a local match or contribution toward the overall project cost.

8. *Vegetation inventories and strategies.*

a. The department shall coordinate and compile integrated roadside vegetation inventories, classification systems, plans, and implementation strategies for

roadsides. Areas of increased program and project emphasis may include, but are not limited to, all of the following:

- (1) Additional development and funding of state gateways projects.
- (2) Accelerated replacement of dead and unhealthy plants with native and hardy trees and shrubs.
- (3) Special interest plantings at selected highly visible locations along primary and interstate highways.
- (4) Pilot and demonstration projects.
- (5) Additional snow and erosion control plantings.
- (6) Welcome center and rest area plantings with native and aesthetically interesting species to create mini-arboretums around the state.

b. The department shall coordinate and compile a reconnaissance of lands to develop an inventory of sites having the potential of being harvested for native grass, forb, and woody plant material seed and growing stock. Highway right-of-ways, parks and recreation areas, converted railroad right-of-ways, state board of regents' property, lands owned by counties, and other types of public property shall be surveyed and documented for seed source potential. Sites volunteered by private organizations may also be included in the inventory. Inventory information shall be made available to state agencies' staffs, county engineers, county conservation board directors, and others.

89 Acts, ch 246, §6 HF 723  
NEW section

### 314.23 Environmental protection.

It is declared to be in the general public welfare of Iowa and a highway purpose that highway maintenance, construction, reconstruction, and repair shall protect and preserve, by not causing unnecessary destruction, the natural or historic heritage of the state. In order to provide for the protection and preservation, the following shall be accomplished in the design, construction, reconstruction, relocation, repair, or maintenance of roads, streets, and highways:

1. *Woodlands.* Woodland removed shall be replaced by plantings as close as possible to the initial site, or by acquisition of an equal amount of woodland in the general vicinity for public ownership and preservation, or by other mitigation deemed to be comparable to the woodland removed, including, but not limited to, the improvement, development, or preservation of woodland under public ownership.

2. *Wetlands.* Wetland removed shall be replaced by acquisition of wetland, in the same general vicinity if possible, for public ownership and preservation, or by other mitigation deemed to be comparable to the wetland removed, including, but not limited to, the improvement, development, or preservation of wetland under public ownership.

3. *Public parks.* Highways, streets, and roads constructed on or through publicly owned lands comprising parks, preserves, or recreation areas, shall be located and designed, in consultation with the public entity owning the land, so as to blend aesthetically with the areas and to minimize noise. When land is taken from the areas for highway construction and if, in consultation with the public entity owning the land, mitigation is deemed necessary, the land shall be replaced by an equal or greater amount for public use, or by other mitigation, undertaken in consultation with the public entity owning the land, and deemed to be appropriate to the amount of land taken, including, but not limited to, the improvement, development, or preservation of the areas.

4. *Prime agricultural lands.* Topsoil removed may be utilized for landscaping and other necessary construction. Excess topsoil shall be made available to the former landowner or other landowners whose land was purchased for the construction or others, and if not acquired by one of these parties, it may be disposed.

89 Acts, ch 311, §26 HF 778  
NEW section

**314.24 Natural and historic preservation.**

Cities, counties, and the department shall to the extent practicable preserve and protect the natural and historic heritage of the state in the design, construction, reconstruction, relocation, repair, or maintenance of roads, streets, or highways. Destruction or damage to natural areas, including but not limited to prime agricultural land, parks, preserves, woodlands, wetlands, recreation areas, greenbelts, historical sites, or archaeological sites shall be avoided, if reasonable alternatives are available for the location of roads, streets, or highways at no significantly greater cost. In implementing this section, cities, counties, and the department shall make a diligent effort to identify and examine the comparative cost of utilizing alternative locations for roads, streets, or highways.

89 Acts, ch 317, §30 SF 531  
NEW section

**314.25 Green space provided.**

The department shall use the property owned by it in the city of Council Bluffs which is bounded by Broadway, Seventh street, Kanessville boulevard, and Sixth street, exclusively for green space, and, if sold by the department, the department shall sell the property with the restricted covenant that the property shall be used exclusively for green space or else revert to the department.

89 Acts, ch 317, §29 SF 531  
Applies retroactively to January 1, 1989; 89 Acts, ch 317, §49 SF 531  
NEW section, renumbered 314.25

**CHAPTER 315****REVITALIZE IOWA'S SOUND ECONOMY FUND****315.4 Allocation of fund.**

Moneys credited to the RISE fund shall be allocated as follows:

1. Twenty thirty-firsts for the use of the department on primary road projects exclusively for highways which are identified under section 307A.2 as being part of the network of commercial and industrial highways.
2. One thirty-first for the use of counties on secondary road projects.
3. Ten thirty-firsts for the use of cities on city street projects.

Commencing June 30, 1990, all uncommitted moneys in the RISE fund on June 30 of each year which are allocated under this section for the use of counties on secondary road projects shall be credited to the secondary road fund.

89 Acts, ch 293, §16 SF 524  
Section amended

**CHAPTER 316****RELOCATION OF PERSONS DISPLACED BY HIGHWAYS****316.1 Definitions.**

As used in this chapter the term:

1. "Administrative rules" means all rules subject to the provisions of chapter 17A.
2. "Business" means any lawful activity, excepting a farm operation, conducted primarily:
  - a. For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;
  - b. For the sale of services to the public;

c. By a nonprofit organization; or

d. Solely for the purposes of section 316.4, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not the display or displays are located on the premises on which any of the above activities are conducted.

3. "Comparable replacement dwelling" means any single family residential unit that is all of the following:

a. Decent, safe, and sanitary.

b. Adequate in size to accommodate the occupants.

c. Within the financial means of the displaced person.

d. Functionally equivalent to the displaced person's dwelling.

e. In an area not subject to unreasonably adverse environmental conditions.

f. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

4. "Department" means the state department of transportation.

5. "Displaced person" means:

a. A person who moves from real property or moves the person's personal property from real property in either of the following circumstances:

(1) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, the real property in whole or in part for a program or project undertaken with federal financial assistance.

(2) The person moved or moved the person's personal property from real property on which the person is either a residential tenant or conducts a small business, a farm operation, or a business as defined in subsection 2, paragraph "d", as a direct result of rehabilitation or demolition for a program or project undertaken with federal financial assistance in a case in which the head of the displacing agency determines that the displacement is permanent.

b. For purposes of section 316.4, subsections 1 and 2, and section 316.7, a person who moves from real property, or moves the person's personal property from real property in either of the following circumstances:

(1) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, other real property in whole or in part if the person conducts a business or farm operation on the other real property for a program or project undertaken with federal financial assistance.

(2) As a direct result of rehabilitation or demolition of other real property on which the person conducts a business or a farm operation for a program or project undertaken with federal financial assistance in a case in which the head of the displacing agency determines that the displacement is permanent.

c. The term "displaced person" does not include any of the following:

(1) A person who has been determined to be either in unlawful occupancy of the real property or who has occupied the real property for the purpose of obtaining assistance under this chapter.

(2) A person, other than the person who was the occupant of the real property at the time it was acquired, who occupies the real property on a rental basis for a short term or a period subject to termination when the real property is needed for the program or project.

(3) An owner-occupant who voluntarily sells the owner-occupant's property, after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached the state agency will not acquire the property.

(4) A person who retains the right of use and occupancy of the real property for life following its acquisition by a state agency.

6. "Displacing agency" means the state or a state agency carrying out a program or project, or any person carrying out a program or project with federal financial assistance, which causes a person to be a displaced person.

7. "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

8. "Federal financial assistance" means a grant, loan, or contribution provided by the United States; however, "federal financial assistance" does not include any federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

9. "Federal Uniform Relocation Act" means the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, as amended by the Uniform Relocation Act Amendments of 1987, Title IV, Pub. L. No. 100-17.

10. "Mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of real property, under the laws of this state, together with the credit instruments, if any, secured thereby.

11. "Person" means any individual, partnership, corporation, or association.

12. "State agency" means any of the following:

a. A department, agency, or instrumentality of the state or of a political subdivision of the state.

b. A department, agency, or instrumentality of two or more political subdivisions of the state, or states.

c. A person who has the authority to acquire property by eminent domain under state law.

89 Acts, ch 20, §1-5 SF 152  
 Subsection 2, paragraph d amended  
 NEW subsections 3, 8 and 9  
 Subsections 5, 6 and 12 stricken and rewritten

### 316.2 Effect on acquisitions and condemnations.

1. The provisions of this chapter shall not affect the validity of any property acquisitions by purchase or condemnation.

2. Nothing in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to the date of this chapter.

3. A payment made or to be made under the authority granted in this chapter shall be for compensating or reimbursing the displaced person or owner of real property in accordance with the requirements of the federal Uniform Relocation Act and this chapter and the payments shall not for any purpose be deemed or considered compensation for real property acquired or compensation for damages to remaining property.

Payments authorized to be made by the federal Uniform Relocation Act and this chapter shall be made as relocation payments, and in order to prevent unjust enrichment or a duplication of payments to any condemnee in any condemnation proceeding or appeal from any condemnation proceeding, an allowance shall not be made in determining just compensation in a condemnation proceeding for any damages, for any item of damage, or any cost, which is authorized to be paid as a relocation payment.

Moving cost payments and allowances for personal property which is damaged or destroyed or reduced in value by an acquisition of property authorized under section 472.14 or any other provision of the Code under the powers of eminent domain on projects where relocation assistance payments are paid under this chapter shall be those payments and allowances authorized by this chapter and

shall not be made or included as part of an award of damages in any condemnation proceeding or appeal from any condemnation proceeding.

89 Acts, ch 20, §6 SF 152  
Subsection 3 stricken and rewritten

### **316.3 Declaration of policy—authorization—divisibility of application.**

1. The purpose of this chapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of federally assisted programs or projects in order that the persons shall not suffer disproportionate injuries as a result of programs or projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on the persons. The general assembly declares that relocation assistance for persons displaced by programs and projects is a necessary and essential part of the programs and projects. This chapter shall be known and may be cited as the "*Relocation Assistance Law*."

2. If a displacing agency subject to the provisions of the federal Uniform Relocation Act, or if another entity required or electing to provide any of the programs or payments authorized by this chapter, undertakes a project which results in the acquisition of real property or in a person being displaced from the person's home, business, or farm, the displacing agency or other entity may provide relocation assistance, and make relocation payments to the displaced person and do the other acts and follow the procedures and practices as may be necessary to comply with the provisions of the federal Uniform Relocation Act and this chapter. Displacing agencies may provide all or a part of the program and payments authorized under this chapter to persons displaced by any program or project regardless of the funding source. However, to the extent a program or a payment is provided, the program or payment shall be provided on a uniform basis to all displaced persons.

3. If a provision, clause, or phrase of this chapter, or application of this chapter to a person or circumstance is adjudged invalid by any court of competent jurisdiction, the judgment shall not invalidate the remainder of the chapter, and the application of the chapter to other persons or circumstances shall not be affected by the adjudication.

89 Acts, ch 20, §7 SF 152  
Section amended

### **316.4 Moving and related expenses.**

1. If a program or project undertaken by a displacing agency will result in the displacement of a person, the displacing agency shall make a payment to the displaced person, upon proper application as approved by the displacing agency, for actual reasonable and necessary expenses incurred in moving the person, the person's family, business, farm operation, or other personal property subject to rules and limits established by the department. The payment may also provide for actual direct losses of tangible personal property, purchase of substitute personal property, business reestablishment expenses, storage expenses, and expenses incurred in searching for a replacement business or farm.

2. A displaced person eligible for payments under subsection 1, who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection 1, may receive a moving expense and dislocation allowance determined according to a schedule established by the department.

3. A displaced person, as defined in section 316.1, subsection 2, paragraph "a", eligible for payments under subsection 1, who is displaced from the person's place of business or farm operation and who is eligible, may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection 1. The payment shall consist of a fixed payment in an amount to be determined according to criteria established by the department. A person whose sole business

at the displaced dwelling is the rental of the real property does not qualify for a payment under this subsection.

89 Acts, ch 20, §8 SF 152  
Section amended

### 316.5 Replacement housing for homeowner.

1. In addition to payments otherwise authorized by this chapter, the displacing agency shall make an additional payment to a displaced person who is displaced from a dwelling actually owned and occupied by the displaced person for not less than one hundred eighty days immediately prior to the initiation of negotiations for the acquisition of the property. All determinations to carry out this section shall be made in accordance with administrative rules adopted by the department. The additional payment shall include the following elements:

a. The amount, if any, which when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling.

b. The amount, if any, which will compensate the displaced person for any increased interest costs and other debt service costs which the displaced person is required to pay for financing the acquisition of a comparable replacement dwelling. The amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than one hundred and eighty days immediately prior to the initiation of negotiations for the acquisition of the dwelling.

c. Actual, reasonable, and necessary expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of a replacement dwelling, but not including prepaid expenses.

2. The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the date on which the person receives final payment from the displacing agency of all costs of the acquired dwelling, or on the date on which the obligation of the displacing agency under section 316.8 is met, whichever is the later, except that the displacing agency may extend the eligibility period for good cause. If the period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within one year of the applicable date.

89 Acts, ch 20, §9 SF 152  
Section amended

### 316.6 Replacement housing for tenants and certain others.

In addition to amounts otherwise authorized by this chapter, the displacing agency shall make a payment to or for a displaced person, displaced from a dwelling, not eligible to receive a payment under section 316.5, which dwelling was actually and lawfully occupied by the displaced person for not less than ninety days immediately prior to the initiation of negotiations for acquisition of the dwelling, or as a result of the written order of the displacing agency to vacate the real property. All determinations to carry out this section shall be made in accordance with administrative rules adopted by the department. The displaced person may elect either of the following:

1. The amount necessary to enable the displaced person to lease or rent a comparable replacement dwelling. At the discretion of the displacing agency, a payment under this subsection may be made in periodic installments. Computations of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account the person's income.

2. The amount necessary to enable the person to make a down payment, including incidental expenses described in section 316.5, subsection 1, paragraph "c", on the purchase of a decent, safe, and sanitary dwelling. The person may, at

the discretion of the displacing agency, be eligible under this subsection for the maximum payment allowed under subsection 1, except that, in the case of a displaced homeowner who has owned and occupied the displaced dwelling for at least ninety days but not more than one hundred and eighty days immediately prior to the initiation of negotiations for the acquisition of the dwelling, the payment shall not exceed the payment the person would otherwise have received under section 316.5, subsection 1, had the person owned and occupied the displaced dwelling for one hundred and eighty days immediately prior to the initiation of the negotiations.

89 Acts, ch 20, §10 SF 152  
Section amended

### **316.7 Relocation assistance advisory services.**

1. A displacing agency shall ensure that relocation assistance advisory services are made available to all persons displaced by the displacing agency. If the displacing agency determines that a person occupying property adjacent to the real property where the displacing activity occurs, is caused substantial economic injury as a result of the displacing activity, the displacing agency may offer the person relocation assistance advisory services.

2. The displacing agency shall co-operate to the maximum extent feasible with federal, state, or local agencies to ensure that the displaced persons receive the maximum assistance available to them.

3. Each relocation assistance advisory program required by subsection 1 shall include such measures, facilities, or services as may be necessary or appropriate in order to comply with the provisions of the federal Uniform Relocation Act and this chapter.

4. The displacing agency shall provide other advisory services to displaced persons in order to minimize hardships to the displaced persons in adjusting to relocation.

5. The displacing agency shall co-ordinate relocation activities with project work, and other planned or proposed governmental actions or displacing activities in the community or nearby areas which may affect the carrying out of relocation assistance programs.

89 Acts, ch 20, §11 SF 152  
Section amended

### **316.8 Housing replacement by the displacing agency.**

1. If a project cannot proceed on a timely basis because comparable replacement dwellings are not available, and the displacing agency determines that such dwellings cannot otherwise be made available, the displacing agency may take such action as is necessary or appropriate to provide the dwellings by use of funds authorized for the program or project. The displacing agency may let contracts for the construction of the dwellings, approve plans and specifications for the building of the dwellings, and supervise, inspect, and approve the dwellings once constructed in order that the dwellings so constructed comply with the terms and conditions of this chapter. The displacing agency may under this section exceed the maximum amounts which may be paid under sections 316.5 and 316.6 on a case-by-case basis for good cause as determined in accordance with administrative rules adopted by the department.

2. A person shall not be required to move from the person's dwelling on or after July 1, 1971, on account of any program or project, unless the displacing agency is satisfied that a comparable replacement dwelling is available to the person.

89 Acts, ch 20, §12 SF 152  
Section amended

### **316.9 Rules.**

The department shall make administrative rules necessary to effect the provisions of this chapter and to assure:

1. Compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, as amended by the Uniform Relocation Act Amendments of 1987, Title IV, Pub. L. No. 100-17.

2. The payments authorized by this chapter are fair and reasonable and as uniform as practicable.

3. A displaced person who makes proper application for a payment authorized by this chapter is paid promptly after a move or, in hardship cases, is paid in advance.

4. A person aggrieved by a determination as to eligibility for assistance or a payment authorized by this chapter, or the amount of a payment, upon application may have the matter reviewed. Rules governing reviews shall provide for a prompt one-step uncomplicated fact-finding process. Such a review is an appeal of an agency action as defined in section 17A.2, subsection 9, and is not a contested case. The decision rendered shall be the displacing agency's final agency action.

All rules shall be subject to the provisions of chapter 17A.

89 Acts, ch 20, §13 SF 152  
Subsection 4 amended

**316.10 Applicable to other than federal-aid highways.** Repealed by 89 Acts, ch 20, §21.

**316.11 Acquisitions by other state agencies and political subdivisions.** Repealed by 89 Acts, ch 20, §21.

**316.12 Payments to displaced persons not to be considered as income.**

Except for any federal or state law providing low-income housing assistance, a payment received by a displaced person under this chapter shall not be considered as income for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any federal or state law or for the purposes of chapter 422.

89 Acts, ch 20, §14 SF 152  
Section amended

**316.13 Administration.**

In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, the displacing agency may enter into contracts with any individual, firm, association, or corporation for services in connection with the programs, or may carry out its functions through any governmental agency, political subdivision, or instrumentality having an established organization for conducting relocation assistance programs. If practicable, the services of state or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities shall be used.

89 Acts, ch 20, §15 SF 152  
Section amended

**316.14 Funding.**

Funds appropriated or otherwise available to any state agency for a program or project shall also be available to carry out the provisions of this chapter.

Payments and expenditures under this chapter for highway projects are incident to and arise out of the construction, maintenance, and supervision of public highways and streets, and, in the case of any federal-aid highway project, may be made by the department from the primary road fund and funds made available by the federal government for the purpose of carrying out this chapter. Payments made under this chapter may be made from the primary road fund in case of a primary road project only, and in other cases may be made from appropriate funds under the control of a political subdivision.

89 Acts, ch 20, §16 SF 152  
Section amended

## CHAPTER 317

### WEEDS

#### **317.5 Weeds in abandoned cemeteries.**

The commissioner shall control the weeds growing in abandoned cemeteries in the county as needed. Spraying for control of weeds shall be limited to those circumstances when it is not practical to mow or otherwise control the weeds.

89 Acts, ch 246, §7 HF 723  
Section amended

#### **317.11 Weeds on roads—harvesting of grass.**

The county boards of supervisors and the state department of transportation shall control noxious weeds growing on the roads under their jurisdiction. Spraying for control of noxious weeds shall be limited to those circumstances when it is not practical to mow or otherwise control the noxious weeds.

Nothing under this chapter shall prevent the landowner from harvesting, in proper season, the grass grown on the road along the landowner's land except for vegetation maintained for highway purposes as part of an integrated roadside vegetation management plan which is consistent with the objectives in section 314.22.

89 Acts, ch 246, §8 HF 723  
Section amended

#### **317.13 Program of control.**

The board of supervisors of each county may each year, upon recommendation of the county weed commissioner by resolution prescribe and order a program of weed control for purposes of complying with all sections of this chapter. The county board of supervisors of each county may also by adopting an integrated roadside vegetation management plan prescribe and order a program of weed control for purposes of complying with all sections of this chapter. The program for weed control ordered or adopted by the county board of supervisors shall provide that spraying for control of weeds shall be limited to those circumstances when it is not practical to mow or otherwise control the weeds.

89 Acts, ch 246, §9 HF 723  
Section amended

#### **317.18 Order for destruction on roads.**

The board of supervisors may order all noxious weeds, within the right-of-way of all county trunk and local county roads to be cut, burned or otherwise controlled to prevent seed production, either upon its own motion or upon receipt of written notice requesting the action from any residents of the township in which the roads are located, or any person regularly using the roads. The order shall be consistent with the county integrated roadside vegetation management plan, if the county has adopted such a plan, and the order shall define the roads along which noxious weeds are required to be cut, burned or otherwise controlled and shall require the weeds to be cut, burned or otherwise controlled within fifteen days after the publication of the order in the official newspapers of the county or as prescribed in the county's integrated roadside vegetation management plan. The order shall provide that spraying for control of noxious weeds shall be limited to those circumstances when it is not practical to mow or otherwise control the weeds.

89 Acts, ch 246, §10 HF 723  
Section amended

#### **317.19 Road clearing appropriation.**

The board of supervisors may appropriate moneys to be used for the purposes of cutting, burning, or otherwise controlling weeds or brush within the right-of-way of county trunk roads and local county roads in time to prevent reseeding or in a

manner consistent with the county's roadside vegetation management plan, if the county has adopted such a plan. The moneys appropriated shall not be spent on spraying for control of weeds except in those circumstances when it is not practical to mow or otherwise control the weeds.

The board of supervisors may purchase or hire necessary equipment or contract with the adjoining landowner to carry out this section.

89 Acts, ch 246, §11 HF 723  
Section amended

### 317.25 Teasel, multiflora rose, and purple loosestrife prohibited.

A person shall not sell, offer for sale, or distribute teasel (*Dipsacus*) biennial, the multiflora rose (*rosa multiflora*), purple loosestrife (*lythrum salicaria*), or seeds of them in any form in this state. However, the multiflora rose (*rosa multiflora*) may be sold, offered for sale, or distributed when used for understock for either cultivated roses or ornamental shrubs in gardens. Any person violating the provisions of this section is subject to a fine of not exceeding one hundred dollars.

89 Acts, ch 193, §1 HF 669  
Section amended

## CHAPTER 321

### MOTOR VEHICLES AND LAW OF THE ROAD

#### 321.1 Definitions of words and phrases.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them.

1. "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 "secondhand motor vehicle" or "used car" means a motor vehicle of a type subject to registration under the laws of this state which has been sold "at retail" as defined in chapter 322 and previously registered in this or any other state.

c. "New car" means a car which has not been sold "at retail" as defined in chapter 322.

d. "Car" or "automobile" means a motor vehicle designed primarily for carrying nine passengers or less, excluding motorcycles and motorized bicycles.

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. (1) Portable tanks, nurse tanks, trailers, and bulk spreaders which are not self-propelled and which have gross weights of not more than twelve tons and are used for the transportation of fertilizer and chemicals used for farm crop production.

(2) Other types of equipment than those listed in subparagraph (1) which are used primarily for the application of fertilizers and chemicals in farm fields or for farm storage.

f. 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, but not including road construction or maintenance machinery and ditch-digging apparatus. This description does not exclude other vehicles which are within the general terms of this subsection. However, this section does not include portable mills or cornshellers mounted upon a motor vehicle or semitrailer.

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.

If authorized to transport patients or clients by the director of the department of human services or the director's designee, an employee of the department of human services is not a chauffeur when transporting the patients or clients in an automobile.

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. "*Rescue vehicle*" means a motor vehicle which is equipped with rescue, fire, or life support equipment used to assist and rescue persons in emergencies or support emergency personnel in the performance of their duties.

88. "*Fire vehicle*" means a motor vehicle which is equipped with pumps, tanks, hoses, nozzles, ladders, generators, or other fire apparatus used to transport fire personnel, fight fires, and respond to emergencies.

89. "*Stinger-steered automobile transporter*" means any vehicle combination designed and used specifically for the transport of assembled highway vehicles, recreational vehicles, or boats in which the fifth wheel is located on a drop frame located below and behind the rearmost axle of the power unit.

89 Acts, ch 34, §1 SF 120; 89 Acts, ch 83, §40, 41 SF 112; 89 Acts, ch 118, §1 HF 679  
 Subsection 2, paragraph b amended  
 Subsection 2, paragraph d stricken and existing paragraph e relettered as d  
 Subsection 43, NEW unnumbered paragraph 5  
 NEW subsection 89

### 321.21 Special mobile equipment plates.

1. A person owning any special mobile equipment may make application to the department, upon the appropriate form furnished by the department, for a certificate containing a general distinguishing number and for one or more special mobile equipment plates. The applicant shall also submit proof of the status of the vehicle as special mobile equipment as may reasonably be required by the department.

2. The department upon granting such application, shall issue to the applicant a certificate containing, but not limited to, the applicant's name and address and the general distinguishing number assigned to the applicant and such other information deemed necessary by the department for proper identification.

3. The department shall also issue special mobile equipment plates as applied for, which shall have displayed the general distinguishing number assigned to the applicant. Each plate or pair of plates issued shall have displayed on the face of the plate the words: Special Mobile Equipment. The fee for each plate or pair of special plates is fifteen dollars.

4. Every special mobile equipment plate issued shall expire at midnight on the thirty-first day of December of the third year following issuance, and a new plate or plates for the ensuing three-year period may be obtained by the person to whom any expired plate was issued upon application to the department and payment of the fee required by law.

5. Every person owning special mobile equipment for which a certificate and a plate or plates have been issued shall keep a written record of the vehicles upon which such special mobile equipment plates are used, which record shall be open to inspection by any police officer or any officer or employee of the department.

6. The certificate and plates issued shall be for purposes of identification only and shall not constitute a registration as required under this chapter. A certificate of title need not be executed when the certificate and plates are issued and a certificate of title need not be delivered to the purchaser or transferee when special mobile equipment is sold or disposed of unless the special mobile equipment is a mobile home.

7. The department may issue temporary written authorization. The temporary authority shall permit the operation of special mobile equipment until permanent identification is issued, except that the temporary authority shall expire after ten days.

8. *a.* If a vehicle was registered as special mobile equipment prior to July 1, 1988, and the vehicle, as of July 1, 1988, no longer was required to be registered as special mobile equipment pursuant to section 321.1, subsection 16, paragraph "e", and subsection 17, the owner in whose name the vehicle was registered may make claim to the state department of transportation for a refund of the vehicle's registration fee subject to the following:

(1) The refund shall be computed on the basis of the number of unexpired months remaining in the registration year on July 1, 1988, and shall be rounded to the nearest whole dollar. Section 321.127, subsection 1, does not apply.

(2) The refund shall only be allowed if the owner provides the credit copy of the registration receipt for the vehicle.

(3) The refund computed under subparagraph (1) shall only be allowed to the extent the amount computed exceeds five dollars.

*b.* This subsection is repealed effective July 1, 1992.

89 Acts, ch 32, §1 HF 475  
NEW subsection 8

### **321.23 Titles to specially constructed and foreign vehicles.**

1. If the vehicle to be registered is a specially constructed, reconstructed, remanufactured or foreign vehicle, such fact shall be stated in the application. A fee of ten dollars shall be paid by the person making the application upon issuance of a certificate of title by the county treasurer. With reference to every specially constructed or reconstructed motor vehicle subject to registration the application shall be accompanied by a statement from the department authorizing the motor vehicle to be titled and registered in this state. The department shall cause a physical inspection to be made of all specially constructed or reconstructed motor vehicles, upon application for a certificate of title by the owner, to determine whether the motor vehicle is in a safe operating condition and that the integral component parts are properly identified and that the rightful ownership is established before issuing the owner the authority to have the motor vehicle registered and titled. With reference to every foreign vehicle which has been registered outside of this state the owner shall surrender to the treasurer all registration plates, registration cards, and certificates of title, or, if vehicle to be registered is from a nontitle state, the evidence of foreign registration and ownership as may be prescribed by the department except as provided in subsection 2.

2. Where in the course of operation of a vehicle registered in another state it is desirable to retain registration of said vehicle in such other state, such applicant need not surrender but shall submit for inspection said evidence of such foreign registration and the treasurer upon a proper showing shall register said vehicle in this state but shall not issue a certificate of title for such vehicle.

3. In the event an applicant for registration of a foreign vehicle for which a certificate of title has been issued is able to furnish evidence of being the registered owner of the vehicle to the county treasurer of the owner's residence, although unable to surrender such certificate of title, the county treasurer may issue a registration receipt and plates upon receipt of the required registration fee but shall not issue a certificate of title thereto. Upon surrender of the certificate of title from the foreign state, the county treasurer shall issue a certificate of title to the owner, or person entitled thereto, of such vehicle as provided in this chapter.

4. A vehicle which does not meet the equipment requirements of this chapter due to the particular use for which it is designed or intended, may be registered by the department upon payment of appropriate fees and after inspection and certification by the department that the vehicle is not in an unsafe condition. A person is not required to have a certificate of title to register a vehicle under this subsection. If the owner elects to have a certificate of title issued for the vehicle, a fee of ten dollars shall be paid by the person making the application upon issuance of a certificate of title. If the department's inspection reveals that the vehicle may be safely operated only under certain conditions or on certain types of roadways, the department may restrict the registration to limit operation of the vehicle to the appropriate conditions or roadways. This subsection does not apply to snowmobiles as defined in section 321G.1. Section 321.382 does not apply to a vehicle registered under this subsection which is operated exclusively by a handicapped person who has obtained a handicapped identification device as provided in section 321L.2, if the handicapped identification device is carried in the vehicle and shown to a peace officer on request.

89 Acts, ch 247, §3 HF 745  
Subsection 4 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. If the prior certificate of title was a salvage, rebuilt, or junking certificate of title in any other state, or if the prior certificate of title in any other state indicates that the vehicle was salvaged, rebuilt, or junked, the new certificate of title shall contain the same information together with the name of the state issuing the prior salvage, rebuilt, or junking certificate of title and a salvage, rebuilt, or junking designation together with the name of the state issuing the prior salvage, rebuilt, or junking certificate of title shall be retained on all subsequent Iowa certificates of title for the vehicle, except as provided in section 321.52. In the event a vehicle which previously had a salvage certificate of title from another state is repaired and a regular certificate of title is to be issued for it pursuant to section 321.52 without the designation rebuilt, the regular certificate of title shall indicate the state which had issued the prior salvage certificate of title in the same location in which Iowa certificates of title show the designation salvage or rebuilt, in addition to the name and address of the previous owner, in lieu of the salvage designation. The name of the state which had issued the prior salvage certificate of title shall remain in that location on every Iowa certificate of title issued thereafter for the vehicle. The department shall adopt rules to determine how other states' designations are to be indicated on Iowa titles.

The certificate shall bear the seal of the county treasurer or of the department, and the signature of the county treasurer, the deputy county treasurer, or the department director or deputy designee. The certificate shall provide space for the signature of the owner. The owner shall sign the certificate of title in the space provided with pen and ink upon its receipt. The certificate of title shall contain upon the reverse side a form for assignment of title or interest and warranty by the owner, for reassignments by a licensed dealer. Attached to the certificate of title shall be an application for a new certificate of title by the transferee as provided in this chapter. However, titles for mobile homes 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.

89 Acts, ch 185, §1 HF 784  
Unnumbered paragraph 3 amended and divided

### 321.31 Records system.

A state and county records system shall be maintained in the following manner:

1. *State records system.* The department shall install and maintain a records system which shall contain the name and address of the vehicle owner, current and previous registration number, vehicle identification number, make, model, style, date of purchase, registration certificate number, maximum gross weight, weight, list price or value of the vehicle as fixed by the department, fees paid and date of payment. The records system shall also contain a record of the certificate of title including such information as the department deems necessary. The information to be kept in the records system shall be entered within forty-eight hours after receipt insofar as is practical. The records system shall constitute the permanent record of ownership of each vehicle titled under the laws of this state.

The department may make photostatic, microfilm, or other photographic copies of certificates of title, registration receipts, or other records, reports or documents which are required to be retained by the department. When copies have been made, the department may destroy the original records in such manner as prescribed by the director. The photostatic, microfilm, or other photographic copies, when no longer of use, may be destroyed in the manner prescribed by the director, subject to the approval of the state records commission. Photostatic, microfilm, or other photographic copies of records shall be admissible in evidence when duly certified and authenticated by the officer having custody and control of the copies of records. Records of vehicle certificates of title may be destroyed seven years after the date of issue.

2. *County records system.* Each county treasurer's office shall maintain a county records system for vehicle registration and certificate of title documents. The records system shall consist of information from the certificate of title including the notation and cancellation of security interests, and information from the registration receipt. The information shall be maintained in a manner approved by the department.

Records of vehicle certificates of title for vehicles that are delinquent for five or more consecutive years may be destroyed by the county treasurer. Automated files, optical disks, microfiche records, and photostatic, microfilm or other photographic copies of records shall be admissible in evidence when duly certified and authenticated by the officer having custody and control of the records.

89 Acts, ch 185, §2 HF 784  
Subsection 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 up to seven initials, letters, or combination of numerals and letters requested by the owner. However, personalized registration plates for motorcycles and

motorized bicycles shall be marked with no more than six initials, letters, or combinations of numerals and letters. Upon receipt of the personalized registration plates, the applicant shall surrender the regular registration plates to the county treasurer. The fee for issuance of the personalized registration plates shall be in addition to the regular annual registration fee.

b. The county treasurer shall validate personalized registration plates in the same manner as regular registration plates are validated under this section at an annual fee of five dollars in addition to the regular annual registration fee. A person renewing a personalized registration plate within one month following the time requirements under section 321.40 may renew the personalized plate without paying the additional registration fee under paragraph "a" but shall pay the five-dollar fee in addition to the regular registration fee and any penalties subject to regular registration plate holders for late renewal.

c. The fees collected by the director under this section shall be paid to the treasurer of state and credited by the treasurer of state as provided in section 321.145.

6. *Sample vehicle registration plates.* Vehicle registration plates displaying the general design of regular registration plates, with the word "sample" displayed on the plate, may be furnished to any person upon payment of a fee of three dollars, except that such plates may be furnished to governmental agencies without cost. Sample registration plates shall not be attached to a vehicle moved on the highways of this state.

7. *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 321L.1, may, upon written application to the department, order handicapped registration plates designed by the department bearing the international symbol of accessibility. The handicapped registration plates shall only be issued if the application is accompanied with a statement from a physician licensed under chapter 148, 149, 150, or 150A, or a chiropractor licensed under chapter 151, written on the physician's or chiropractor's stationery, stating the nature of the applicant's handicap and such additional information as required by rules adopted by the department. If the application is approved by the department the handicapped registration plates shall be issued to the applicant in exchange for the previous registration plates issued to the person. The fee for the handicapped plates is five dollars which is in addition to the regular annual registration fee. The department shall validate the handicapped plates in the same manner as regular registration plates are validated under this section at the regular annual registration fee. However, the handicapped plates shall not be renewed without the applicant furnishing evidence to the department that the owner of the motor vehicle is still a handicapped person as defined in section 321L.1, unless the applicant has previously provided satisfactory evidence to the department that the owner of the vehicle is permanently handicapped in which case the furnishing of additional evidence shall not be required for renewal. The handicapped registration plates shall be surrendered in exchange for regular registration plates when the owner of the motor vehicle no longer qualifies as a handicapped person as defined in section 321L.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.

10. *Collegiate plates.*

a. Upon application and payment of the proper fees, the director may issue to the owner of a motor vehicle, trailer, or travel trailer registered in this state, collegiate registration plates. Upon receipt of the collegiate registration plates, the applicant shall surrender the regular registration plates to the county treasurer.

b. Collegiate registration plates shall be designed for each of the three state universities. The collegiate registration plates shall be designated as follows:

(1) The letters "ISU" followed by a four-digit number all in cardinal on a gold background for Iowa State University of science and technology.

(2) The letters "UNI" followed by a four-digit number all in purple on a gold background for the University of Northern Iowa.

(3) The letters "UI" followed by a four-digit number all in black on a gold background for the state University of Iowa.

c. The fees for a collegiate registration plate are as follows:

(1) A registration fee of twenty-five dollars.

(2) A special collegiate registration fee of twenty-five dollars.

These fees are in addition to the regular annual registration fee. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited by the treasurer of state to the road use tax fund. Notwithstanding section 423.24 and prior to the application of section 423.24, subsection 1, paragraph "b", the treasurer of state shall credit monthly from revenues derived from the operation of section 423.7, respectively, to Iowa State University of science and technology, the University of Northern Iowa, and the state University of Iowa, the amount of the special collegiate registration fees collected in the previous month for collegiate registration plates designed for the university. The moneys credited are appropriated to the respective universities to be used for scholarships for students attending the universities.

d. The county treasurer shall validate collegiate registration plates in the same manner as regular registration plates are validated under this section at an annual fee of five dollars in addition to the regular annual registration fee.

11. *Congressional medal of honor plates.* The owner of a motor vehicle subject to registration under section 321.109, subsection 1, light delivery truck, panel delivery truck or pickup who has been awarded the congressional medal of honor may, upon written application to the department, order special registration plates which shall be red, white, and blue in color and shall bear an emblem of the congressional medal of honor and an identifying number. Each applicant applying for special registration plates under this subsection may purchase only one set of registration plates under this subsection. The application is subject to approval by the department and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The special plates are subject to an annual registration fee of fifteen dollars. The department shall validate the special plates in the same manner as regular registration plates are validated under this section. The department shall not issue special registration plates until service organizations in the state have furnished the department either the special dies or the cost of the special dies necessary for the manufacture of the special registration plate.

12. *Pearl Harbor plates.* Effective January 1, 1990, 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 at Pearl Harbor, Hawaii, as a member of the armed services of the United States on December 7, 1941, may, upon written application to the department, order special registration plates which shall bear the notation "PEARL HARBOR VETERAN". The special plates shall bear the identification "DEC 7" followed by a two digit identifying number. Each applicant applying for special registration plates under this subsection may purchase only one set of registration plates under this subsection. The application is subject to approval by the department. Upon receipt of the special registration plates, the applicant shall surrender the regular registration plates to the county treasurer. The fee for the issuance of the special registration plates is twenty-five dollars which shall be in addition to the regular annual registration fee. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section with no additional registration fee being required other than the regular annual registration fee.

89 Acts, ch 17, §1 SF 179; 89 Acts, ch 296, §27 SF 141; 89 Acts, ch 247, §4 HF 745; 89 Acts, ch 27, §1 HF 332; 89 Acts, ch 317, §31 SF 531

1988 amendment to subsection 5, paragraph a took effect March 24, 1989; 89 Acts, ch 17, §1, 2

1989 amendment to subsection 7 effective January 1, 1990; 89 Acts, ch 247, §21 HF 745

See Code editor's note

Subsection 5, paragraph a, effective date amended

Subsection 5, paragraph b amended

Subsection 7 amended

NEW subsection 12

### 321.39 Expiration of registration.

Except as provided in this chapter every vehicle registration, registration card, and registration plate shall expire as follows:

1. For vehicles registered under chapter 326 and any motor truck, truck tractor, or road tractor registered for a combined gross weight exceeding five tons, at midnight on the last day of December of each year.

2. For vehicles registered by the county treasurer, at midnight on the last day of the registration year.

3. For vehicles on which the first installment of an annual fee has been paid, at midnight on the last day of June; for vehicles on which the second installment of an annual fee has been paid, at midnight on the last day of December.

4. For vehicles registered without payment of fees as provided in section 321.19, when designated by the department.

Registration for every vehicle registered by the county treasurer shall expire upon transfer of ownership.

89 Acts, ch 83, §42 SF 112  
Subsection 5 stricken

### **321.50 Security interest provisions.**

1. A security interest in a vehicle subject to registration under the laws of this state or a mobile home, except trailers whose empty weight is two thousand pounds or less, and except new or used vehicles held by a dealer or manufacturer as inventory for sale, is perfected by the delivery to the county treasurer of the county where the certificate of title was issued or, in the case of a new certificate, to the county treasurer where the certificate will be issued, of an application for certificate of title which lists the security interest, or an application for notation of security interest signed by the owner, or by one owner of a vehicle owned jointly by more than one person, or a certificate of title from another jurisdiction which shows the security interest, and a fee of five dollars for each security interest shown. If the owner or secured party is in possession of the certificate of title, it must also be delivered at this time in order to perfect the security interest. If a vehicle is subject to a security interest when brought into this state, the validity of the security interest and the date of perfection is determined by section 554.9103. Delivery as provided in this subsection is an indication of a security interest on a certificate of title for purposes of chapter 554.

2. Upon receipt of the application and the required fee, the county treasurer shall notify the holder of the certificate of title to deliver to the county treasurer, within five days from the receipt of notice, the certificate of title to permit notation of the security interest. If the holder of the certificate of title shall fail to deliver it within the said five days, the holder shall be liable to anyone harmed by the holder's failure.

3. Upon receipt of the application, the certificate of title, if any, and the required fee, the county treasurer shall note such security interest, and the date thereof, on the certificate over the signature of such officer or deputy and the seal of office. The county treasurer shall also note such security interest and the date thereof in the county records system. The county treasurer shall then mail the certificate of title to the first secured party as shown thereon.

4. When a security interest is discharged, the holder shall note a cancellation of same on the face of the certificate of title over the holder's signature, and deliver the certificate of title to the county treasurer where title was issued. The county treasurer shall immediately note the cancellation of the security interest on the face of the certificate of title and in the county records system. The county treasurer shall on the same day deliver the certificate of title to the then first secured party or, if there is no such person, to the person as directed by the owner, in writing, on a form prescribed by the department or, if there is no person designated, then to the owner. The cancellation of the security interest shall be noted on the certificate of title by the county treasurer without charge. The holder of a security interest discharged by payment who fails to release the security interest within fifteen days after being requested in writing to do so shall forfeit to the person making the payment the sum of twenty-five dollars.

5. The Uniform Commercial Code, chapter 554, Article 9, shall apply to all transactions intended to create a security interest in vehicles except as provided in this chapter.

6. Any person obtaining possession of a certificate of title for a vehicle not already subject to a perfected security interest, except new or used vehicles held by a dealer or manufacturer as inventory for sale, who purports to have a security interest in such vehicle shall, within thirty days from the receipt of the certificate of title, deliver such certificate of title to the county treasurer of the county where it was issued to note such security interest and, if such person fails to do so, the

person's purported security interest in the vehicle shall be void and unenforceable and such person shall forthwith deliver the certificate of title to the county treasurer of the county where it was issued. If no security interest has been filed for notation on the certificate of title, the certificate shall be mailed by the treasurer to the owner of the vehicle. For purposes of determining the commencement date of the thirty-day period provided by this subsection, it shall be presumed that the purported security interest holder received the certificate of title on the date of the creation of the holder's purported security interest in the vehicle or the date of the issuance of the certificate of title, whichever is the latter. Any person collecting a fee from the owner of the vehicle for the purpose of perfecting a security interest in such vehicle who does not cause such security interest to be noted on the certificate of title by the county treasurer shall remit such fee to the department of revenue and finance of this state.

7. Upon request of any person, the county treasurer shall issue a certificate showing whether there are, on the date and hour stated therein, any security interests noted on a particular vehicle's certificate of title, and the name and address of each secured party whose security interest is noted thereon. The uniform fee for a written certificate shall be two dollars if the request for the certificate is on a form conforming to standards prescribed by the secretary of state; otherwise, three dollars. Upon request and payment of the appropriate fee, the county treasurer shall furnish a certified copy of any security interest notations for a uniform fee of one dollar per page.

89 Acts, ch 260, §3 SF 291  
Subsection 1 amended

### **321.52 Out-of-state sales—junked, dismantled, wrecked, or salvage vehicles.**

1. When a vehicle is sold outside the state for purposes other than for junk the owner, dealer or otherwise, shall detach the registration plates and registration card and shall indicate on the reverse side of such registration card the name and address of the foreign purchaser or transferee over the person's signature. The owner shall surrender the registration plates and registration card to the county treasurer, unless the registration plates are properly attached to another vehicle, who shall cancel the records and shall destroy the registration plates and forward the registration card to the department. The department shall make a notation on the records of the out-of-state sale, and, after a reasonable period, may destroy the files to that particular vehicle. The department is not authorized to make a refund of license fees on a vehicle sold out of state unless it receives the registration card completed as provided in this section.

2. The purchaser or transferee of a motor vehicle for which a certificate of title is issued which is sold for scrap or junk shall surrender the certificate of title to the county treasurer of the county of residence of the transferee within fifteen days after assignment of the certificate of title. The county treasurer shall issue to such person without fee a junking certificate. A junking certificate shall authorize the holder to possess, transport or transfer by endorsement the ownership of the junked vehicle. A certificate of title shall not again be issued for the vehicle subsequent to the issuance of a junking certificate. The county treasurer shall cancel the record of the vehicle and forward the certificate of title to the department. The junking certificate shall be of a form to allow for the assignment of ownership of the vehicle. The junking certificate shall provide a space for the notation of the transferee of the component parts of the vehicle transferred by the owner of the vehicle.

3. When a vehicle for which a certificate of title is issued is junked or dismantled by the owner, the owner shall detach the registration plates and surrender the plates to the county treasurer, unless the plates are properly assigned to another vehicle. The owner shall also surrender the certificate of title

to the county treasurer. Upon surrendering the certificate of title, the county treasurer shall issue to the person, without fee, a junking certificate, which shall authorize the holder to possess, transport or transfer ownership of the junked vehicle by endorsement of the junking certificate. The county treasurer shall hold the surrendered certificate of title, registration receipt and, if applicable, the registration plates for a period of fourteen days following the issuance of a junking certificate under this subsection. Within the fourteen-day period the person who was issued the junking certificate and to whom the vehicle was titled or assigned may surrender to the county treasurer the junking certificate, and upon the person's payment of appropriate fees and taxes and payment of any credit for registration fees received by the person for the vehicle under section 321.46, subsection 3, the county treasurer shall issue to the person a certificate of title for the vehicle. After the expiration of the fourteen-day period, a county treasurer shall not issue a certificate of title for a junked vehicle for which a junking certificate is issued. The county treasurer shall cancel the record of the vehicle and forward the certificate of title to the department.

However, upon application the department upon a showing of good cause may issue a certificate of title after the fourteen-day period for a junked vehicle for which a junking certificate has been issued. For purposes of this subsection, "good cause" means that the junking certificate was obtained by mistake or inadvertence. If a person's application to the department is denied, the person may seek judicial review as provided under sections 17A.19 and 17A.20.

4. a. A vehicle rebuilder or a motor vehicle dealer licensed under chapter 322, upon acquisition of a wrecked or salvage vehicle, shall surrender the certificate of title or manufacturer's or importer's statement of origin properly assigned, together with an application for a salvage certificate of title to the county treasurer of the county of residence of the purchaser or transferee within fourteen days after the date of assignment of the certificate of title for the wrecked or salvage motor vehicle. This subsection applies only to vehicles with a fair market value of five hundred dollars or more, based on the value before the vehicle became wrecked or salvage. Upon payment of a fee of two dollars, the county treasurer shall issue a salvage certificate of title which shall bear the word "SALVAGE" stamped or printed on the face of the title in a manner prescribed by the department. A salvage certificate of title may be assigned to any person. A vehicle on which ownership has transferred to an insurer of the vehicle, as a result of a settlement with the owner of the vehicle arising out of damage to, or unrecovered theft of the vehicle, shall be deemed to be a wrecked or salvage vehicle and the insurer shall comply with this subsection to obtain a salvage certificate of title within fourteen days after the date of assignment of the certificate of title of the vehicle. However, a vehicle that has major damage to four or more component parts as defined in paragraph "b" shall receive a junking certificate of title and shall not thereafter be granted a regular certificate of title.

b. When a wrecked or salvage vehicle has been repaired, the owner may apply for a regular certificate of title by paying the appropriate fees and surrendering the salvage certificate of title and a properly executed salvage theft examination certificate. The county treasurer shall issue a regular certificate of title which, commencing September 1, 1988, if the wrecked or salvage vehicle is five model years old or less, shall bear the word "REBUILT" stamped or printed on the face of the title. The rebuilt designation shall be included on every Iowa certificate of title issued thereafter for the vehicle. However, if ownership of a stolen vehicle has been transferred to an insurer organized under the laws of this state or admitted to do business in this state, or if the transfer was the result of a settlement with the owner of the vehicle arising from damage to or the unrecovered theft of the vehicle, and if the insurer certifies to the county treasurer on a form approved by the department that the cost of repairs to all damage to the vehicle is less than

three thousand dollars, the county treasurer shall issue the regular certificate of title without the rebuilt designation. The county treasurer shall issue a regular certificate of title without the "REBUILT" designation if, before repairs are made, a component parts review has been conducted by a peace officer who has been specially certified and recertified when required by the Iowa law enforcement academy to do salvage theft examinations. The Iowa law enforcement academy shall determine standards for training and certification, conduct training, and may approve alternative training programs which satisfy the academy's standards for training and certification. For the purpose of this section, a wrecked or salvage vehicle shall be considered to have component part damage if there is major damage requiring repairs or replacement of more than two of the vehicle's component parts. A "component part" means the rear clip, cowl, frame or inner structure forward of the cowl, body, cab, front end assembly, front clip, or such other parts which are critical to the safety of the vehicle as determined by rules adopted by the department. The owner shall pay a fee of thirty-five dollars upon the completion of the prerepair component parts review. The agency performing the examinations shall retain twenty-five dollars of the fee and shall pay five dollars of the fee to the department and five dollars of the fee to the Iowa law enforcement academy to provide for the special training, certification, and recertification of officers as required by this subsection. The peace officer conducting the review shall maintain a record of the review and shall forward a copy of the review to the department. The department shall maintain a record of all reviews. If a vehicle does not have component damage as determined in this subsection, the officer conducting the review shall issue a certificate to the owner to that effect. The certificate shall be surrendered to the county treasurer at the time of application for a regular certificate of title and the treasurer shall forward the certificate to the department.

The provision of this subsection requiring a component parts review by a peace officer specially certified or recertified by the Iowa law enforcement academy to do salvage theft examinations shall become effective July 1, 1990. Component parts reviews conducted before July 1, 1990, shall be made by peace officers authorized to do so by the state department of transportation or the department of public safety who are qualified, as determined by those agencies, to conduct component parts reviews. The state department of transportation shall adopt rules in accordance with chapter 17A to carry out this section, including transition rules allowing for component parts reviews prior to July 1, 1990.

c. A salvage theft examination shall be made by a peace officer who has been specially certified and recertified when required by the Iowa law enforcement academy to do salvage theft examinations. The Iowa law enforcement academy shall determine standards for training and certification, conduct training, and may approve alternative training programs which satisfy the academy's standards for training and certification. The owner of the salvage vehicle shall make the vehicle available for examination at a time and location designated by the peace officer doing the examination. The owner may obtain a permit to drive the vehicle to and from the examination location by submitting a repair affidavit to the agency performing the examination stating that the vehicle is reasonably safe for operation and listing the repairs which have been made to the vehicle. The owner must be present for the examination and have available for inspection the salvage title, bills of sale for all essential parts changed, and the repair affidavit. The examination shall be for the purposes of determining whether the vehicle or repair components have been stolen. The examination is not a safety inspection and a signed salvage theft examination certificate shall not be construed by any court of law to be a certification that the vehicle is safe to be operated. There shall be no cause of action against the peace officer or the agency conducting the examination or the county treasurer for failure to discover or note safety defects.

If the vehicle passes the theft examination, the peace officer shall indicate that the vehicle passed examination on the salvage theft examination certificate and, with regard to a vehicle which is required to bear the word "REBUILT" stamped or printed on the face of the title, shall permanently identify the vehicle as "rebuilt" on the driver's door jamb or other area on the vehicle as designated by the department. A removal or alteration of this rebuilt identification is a violation of section 321.92. The repair affidavit, permit, and salvage theft examination certificate shall be on controlled forms prescribed and furnished by the department. The owner shall pay a fee of thirty dollars upon completion of the examination. The agency performing the examinations shall retain twenty dollars of the fee and shall pay five dollars of the fee to the department and five dollars of the fee to the Iowa law enforcement academy to provide for the special training, certification, and recertification of officers as required by this subsection.

The provision of this subsection requiring a salvage theft examination by a peace officer specially certified or recertified by the Iowa law enforcement academy to do salvage theft examinations shall become effective July 1, 1989. Salvage theft examinations conducted before July 1, 1989, shall be made by peace officers authorized to do so by the state department of transportation or the department of public safety who are qualified, as determined by those agencies, to conduct salvage theft examinations. The state department of transportation shall adopt rules in accordance with chapter 17A to carry out this section, including transition rules allowing for salvage theft examinations prior to July 1, 1989.

d. For purposes of this subsection a "wrecked or salvage vehicle" means a damaged vehicle subject to registration and having a gross vehicle weight rating of less than thirty thousand pounds, for which the cost of repair exceeds fifty percent of the fair market value of the vehicle, as determined in accordance with rules adopted by the department, before it became damaged.

e. A person who titled the person's motor vehicle before May 1, 1989, may have a title issued on that motor vehicle to the person without the "REBUILT" designation, if the person can show adequate proof that the wrecked or salvage motor vehicle was inspected by a peace officer prior to being repaired prior to September 1, 1988, and show proof through receipts of used parts and photos of the damage to the wrecked or salvage motor vehicle that the motor vehicle did not have major damage requiring repairs or replacement of more than two of the vehicle's component parts. Upon proper application and payment of a two dollar fee, the county treasurer shall issue to the person the title to the person's motor vehicle without the "REBUILT" designation.

89 Acts, ch 185, §3 HF 784; 89 Acts, ch 296, §28 SF 141

Subsection 4, paragraph b amended

Subsection 4, NEW paragraph e

### 321.123 Trailers.

All trailers except farm trailers and mobile homes, unless otherwise provided in this section, are subject to a registration fee of six dollars for trailers with a gross weight of one thousand pounds or less and ten dollars for other trailers. Trailers for which the empty weight is two thousand pounds or less are exempt from the certificate of title and lien provisions of this chapter. Fees collected under this section shall not be reduced or prorated under chapter 326.

1. Travel trailers and fifth-wheel travel trailers, except those in manufacturer's or dealer's stock, an annual fee of twenty cents per square foot of floor space computed on the exterior overall measurements, but excluding three feet occupied by any trailer hitch as provided by and certified to by the owner, to the nearest whole dollar, which amount shall not be prorated or refunded; except the annual fee for travel trailers of any type, when registered in Iowa for the first time or when removed from a manufacturer's or dealer's stock, shall be prorated on a monthly basis. The registrant of a travel trailer of any type shall be issued a

“travel trailer” plate. It is further provided the annual fee thus computed shall be limited to seventy-five percent of the full fee after the vehicle is more than six model years old.

A travel trailer may be stored under section 321.134, provided the travel trailer is not used for human habitation for any period during storage and is not moved upon the highways of the state. A travel trailer stored under section 321.134 is not subject to a mobile home tax assessed under chapter 135D.

2. Trailers and bulk spreaders which are not self-propelled having a gross weight of not more than twelve tons used for the transportation of fertilizers and chemicals used for farm crop production shall be subject to a registration fee of five dollars.

3. Motor trucks or truck tractors pulling trailers or semitrailers shall be registered for the combined gross weight of the motor truck or truck tractor and trailer or semitrailer, except that:

a. Motor trucks registered for six tons or less not used for hire, pulling trailers or semitrailers used by a person engaged in farming to transport commodities produced by the owner, or to transport commodities or livestock purchased by the owner for use in the owner's own farming operation or used by any person to transport horses shall not be subject to registration for the gross weight of such trailer or semitrailer provided the combined gross weight does not exceed twelve tons, plus the tolerance provided for in section 321.466.

b. Motor trucks registered for six tons or less not used for hire, pulling trailers or semitrailers used by a person in the person's own operations shall not be subject to registration for the gross weight of such trailer or semitrailer provided the combined gross weight does not exceed eight tons, plus the tolerance provided for in section 321.466.

89 Acts, ch 296, §29 SF 141

Subsection 1, unnumbered paragraph 2 amended and unnumbered paragraph 3 stricken

### **321.130 Fees in lieu of taxes.**

The registration fees imposed by this chapter upon private passenger motor vehicles or semitrailers are in lieu of all state and local taxes, except local vehicle taxes, to which motor vehicles or semitrailers are subject.

89 Acts, ch 296, §30 SF 141

Section amended

### **321.134 Monthly penalty.**

1. On the first day of the second month following the beginning of each registration year a penalty of five percent of the annual registration fee shall be added to the registration fees not paid by that date and an additional penalty of five percent shall be added the first day of each succeeding month, until the fee is paid. A penalty shall not be less than five dollars. If the owner of a vehicle surrenders the registration plates for a vehicle prior to the plates becoming delinquent, to the county treasurer of the county where the vehicle is registered, or to the department if the vehicle is registered under chapter 326, the owner may register the vehicle any time thereafter upon payment of the registration fee for the registration year without penalty. The penalty on vehicles registered under chapter 326 shall accrue February 1 of each year.

2. The annual registration fee for trucks, truck tractors, and road tractors, as provided in sections 321.121 and 321.122, may be payable in two equal semiannual installments if the annual registration fee exceeds the registration fee for a vehicle with a gross weight exceeding five tons. The penalties provided in subsection 1 shall be computed on the amount of the first installment only and on the first day of the seventh month of the registration period the same rate of penalty shall apply to the second installment, until the fee is paid. Semiannual installments do not apply to commercial vehicles subject to proportional registra-

tion, with a base state other than the state of Iowa, as defined in section 326.2, subsection 6. The penalty on vehicles registered under chapter 326 accrues August 1 of each year.

3. If a penalty applies to a vehicle registration fee provided for in sections 321.121 and 321.122, the same penalty shall be assessed on the fees collected to increase the registered gross weight of the vehicle, if the increased gross weight is requested within forty-five days from the date the delinquent vehicle is registered for the current registration period.

4. Notwithstanding subsections 1 through 3, if a vehicle registration is delinquent for twenty-four months or more, a flat penalty and fee shall be assessed for the delinquent period in addition to the current registration fee. The flat penalty and fee shall be one hundred fifty percent of the current annual registration fee.

89 Acts, ch 185, §4 HF 784  
Section amended

### **321.153 Treasurer's report to department.**

The county treasurer shall on the tenth day of each month certify under county seal to the department, on forms furnished by it, a full and complete statement of all fees and penalties received by the county treasurer during the preceding calendar month.

89 Acts, ch 185, §5 HF 784  
Section amended

### **321.166 Vehicle plate specifications.**

Vehicle registration plates shall conform to the following specifications:

1. Registration plates shall be of metal and of a size not to exceed six inches by twelve inches, except that the size of plates issued for use on motorized bicycles, motorcycles, and special mobile equipment shall be established by the department.

2. Every registration plate or pair of plates shall display a registration plate number which shall consist of alphabetical or numerical characters or a combination thereof and the name of this state, which may be abbreviated. Every registration plate issued by the county treasurer shall display the name of the county except plates issued for truck tractors, motorcycles, motorized bicycles, travel trailers, semitrailers and trailers. The year of expiration or the date of expiration shall be displayed on vehicle registration plates, except plates issued under section 321.19. Special truck registration plates shall display the word "special".

3. The registration plate number shall be displayed in characters which shall not exceed a height of four inches nor a stroke width exceeding five-eighths of an inch. Special plates issued to dealers shall display the alphabetical character "D", which shall be of the same size of the characters in the registration plate. The registration plate number issued for motorized bicycles and motorcycles shall be a size prescribed by the department.

4. The registration plate number, except on motorized bicycle, motorcycle, and special mobile equipment registration plates, shall be of sufficient size to be readable from a distance of one hundred feet during daylight.

5. There shall be a marked contrast between the color of the registration plates and the data which is required to be displayed on the registration plates. When a new series of registration plates is issued to replace a current series, the new registration plates shall be of a distinctively different color from the series which is replaced, except for collegiate registration plates issued under section 321.34, subsection 10.

6. Registration plates issued a disabled veteran under the provisions of section 321.105, shall display the alphabetical characters "DV" which shall precede the

registration plate number. The plates may also display a handicapped identification sticker if issued to the disabled veteran by the department under section 321L.2.

7. The month of expiration of registration, which may be abbreviated, shall be displayed on vehicle registration plates issued by the county treasurer. A distinctive emblem or validation sticker may be prescribed by the department to designate the month of expiration which shall be attached to the embossed area on the plate located at the lower corners of the registration plate.

89 Acts, ch 247, §5 HF 745  
Subsection 6 amended

### **321.178 Driver education—restricted license.**

1. *Approved course.* An approved driver education course as programmed by the department of education shall consist of at least thirty clock hours of classroom instruction, and six or more clock hours of laboratory instruction of which at least three clock hours shall consist of street or highway driving. An approved course shall include a minimum of two hours of classroom instruction concerning substance abuse as part of its curriculum. After the student has completed three clock hours of street or highway driving and has demonstrated to the instructor an ability to properly operate a motor vehicle and upon written request of a parent or guardian, the instructor may waive the remaining required laboratory instruction.

Every public school district in Iowa shall offer or make available to all students residing in the school district or Iowa students attending a nonpublic school in the district an approved course in driver education. The courses may be offered at sites other than at the public school, including nonpublic school facilities within the public school districts. An approved course offered during the summer months, on Saturdays, after regular school hours during the regular terms or partly in one term or summer vacation period and partly in the succeeding term or summer vacation period, as the case may be, shall satisfy the requirements of this section to the same extent as an approved course offered during the regular school hours of the school term. A student who successfully completes and obtains certification in an approved course in driver education or an approved course in motorcycle education may, upon proof of such fact, be excused from any field test which the student would otherwise be required to take in demonstrating the student's ability to operate a motor vehicle.

"*Student*" for purposes of this section, means a person between the ages of fourteen years and twenty-one years who resides in the public school district and who satisfies the preliminary licensing requirements of the department.

Any person who successfully completes an approved driver education course at a private or commercial driver education school licensed by the department, shall likewise be eligible for an operator's license at the age of sixteen years, providing the instructor in charge of the student's training has satisfied the educational requirements for a teaching certificate at the secondary level and holds a valid certificate to teach driver education in the public schools of Iowa.

#### *2. Restricted license.*

a. Any person between sixteen and eighteen years of age who is not in attendance at school or who is in attendance in a public or private school where an approved driver's education course is not offered or available, may be issued a restricted license only for travel to and from work without having completed an approved driver's education course. The restricted license shall be issued by the department only upon confirmation of the person's employment and need for a restricted license to travel to and from work and upon receipt of a written statement from the public or private school that an approved course in driver's education was not offered or available to the person, if applicable. The employer shall notify the department if the employment of the person is terminated before

the person attains the age of eighteen. The person shall not have a restricted license revoked or suspended upon re-entering school prior to age eighteen provided the student enrolls in and completes the classroom portion of an approved driver's education course as soon as a course is available.

b. The department may suspend a restricted license issued under this section upon receiving a record of the person's conviction for one violation and shall revoke the license upon receiving a record of conviction for two or more violations of a law of this state or a city ordinance regulating the operation of motor vehicles on highways, other than parking violations as defined in section 321.210. After revoking a license under this section the department shall not grant an application for a new license or permit until the expiration of one year or until the person attains the age of eighteen whichever is the longer period.

89 Acts, ch 266, §1 SF 157

Subsection 1, unnumbered paragraph 3 amended

### **321.180 Instruction permits.**

1. A person who is at least fourteen years of age and who, except for the person's lack of instructions in operating a motor vehicle, would be qualified to obtain an operator's license, shall, upon meeting the requirements of section 321.186 other than a driving demonstration, and upon paying the required fee, be issued a temporary instruction permit by the department. Subject to the limitations in this subsection, a temporary instruction permit entitles the permittee, while having the permit in the permittee's immediate possession, to drive a motor vehicle upon the highways for a period of two years from the date of issuance. The permittee must be accompanied by a licensed operator or chauffeur who is at least eighteen years of age, who is an approved driver education instructor, or who is a prospective driver education instructor enrolled in and specifically designated by a practitioner preparation program with a safety education program approved by the state board of education, and who is actually occupying a seat beside the driver. The temporary instruction permit issued to a person who is less than sixteen years of age entitles the permittee to drive a motor vehicle upon the highways only when accompanied by a licensed operator or chauffeur who is the parent or guardian of the permittee, an approved driver education instructor, a prospective driver education instructor who is enrolled in and has been specifically designated by a practitioner preparation program with a safety education program approved by the state board of education, or a person who is twenty-five years of age or more if written permission is granted by the parent or guardian, and who is actually occupying a seat beside the driver.

If the permittee is driving a motorcycle, the qualified operator must be within audible and visual communications distance from the permittee and be accompanying the permittee on or in a different motor vehicle. Only one permit holder shall be under the immediate supervision of an accompanying qualified operator, unless the qualified operator is an approved motorcycle or driver education instructor or a prospective motorcycle or driver education instructor, and the permittee is enrolled in an approved motorcycle or driver education course, in which case no more than three students shall be under the immediate supervision of each instructor while on the highway.

2. A person, upon meeting each of the following requirements, shall be eligible to apply for a chauffeur's instruction permit valid for the operation of a motor vehicle requiring a chauffeur's license when the permittee is accompanied by a person, possessing a valid chauffeur's license, properly licensed to drive the motor vehicle and actually occupying a seat beside the permittee. An applicant must be at least eighteen years of age, otherwise qualified to obtain a valid chauffeur's license and must meet the requirements of section 321.186 other than a driving demonstration. The chauffeur's instruction permit shall be valid for a period not to exceed two years and shall be returned to the department upon receipt of a valid

chauffeur's license. Issuance of a chauffeur's instruction permit shall not require the surrender of a valid operator's license.

A permittee shall not be penalized for failing to have the permit in immediate possession if the permittee produces in court, within a reasonable time, an instruction permit issued to the permittee and valid at the time of the permittee's arrest.

89 Acts, ch 265, §39 HF 794

See Code editor's note

Subsection 1, unnumbered paragraph 1, amended

### **321.190 Issuance of nonoperator's identification cards—fee.**

1. *Application for and contents of card.* The department shall, upon application and payment of the required fee, issue to an applicant a nonoperator's identification card, which card shall bear a distinguishing number assigned to the card holder, the full name, date of birth, sex, residence address, a brief description and a colored photograph of the card holder, the usual signature of the card holder, and such other information as the department may by rule require. The card, including the colored photograph, shall be issued to the applicant at the time of application and no positive or negative photograph shall be retained. The department shall, by rule, establish procedures for the application for, and issuance of, a nonoperator's identification card. An identification card shall not be valid unless it bears the usual signature of the card holder.

The department shall use a process or processes for issuance of a nonoperator's identification card, that prevents, as nearly as possible, the opportunity for alteration or reproduction of, and the superimposition of a photograph on the nonoperator's identification card without ready detection.

The fee for a nonoperator's identification card shall be five dollars and the card shall be valid for the purpose of identification for a period of four years from the date of issuance.

The nonoperator's identification card fees shall be transmitted by the department to the treasurer of state who shall credit such fees to the general fund of the state.

2. *Unlawful use of nonoperator's identification cards.* It is a simple misdemeanor, punishable as provided in section 321.482, for any person:

a. To display or permit to be displayed or possess any fictitious or fraudulently altered nonoperator's identification card.

b. To lend the person's nonoperator's identification card to any person or knowingly permit the use of such card by another person.

c. To display or represent as one's own a nonoperator's identification card not issued to such person.

d. To fail or refuse to surrender to the department upon its lawful demand an expired or invalid nonoperator's identification card.

e. To use a false or fictitious name in any application for a nonoperator's identification card or to knowingly make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application.

f. To permit any unlawful use of a nonoperator's identification card issued to such person.

3. *Colored photograph—procedures.* The department shall in issuing licenses, permits and nonoperator's identification cards bearing a colored photograph of the licensee, permittee or card holder use such processes that prevent to the maximum extent possible, the alteration or reproduction of the license, permit or card including the ability to superimpose a photograph on a license, permit or card without ready detection.

89 Acts, ch 317, §32 SF 531

Voter registration form included; 89 Acts, ch 144, §2 HF 144

Subsection 1, unnumbered paragraph 3 amended

### 321.194 Minors' school licenses.

Upon certification of a special need by the school board or the superintendent of the applicant's school, the department may issue a school license to a person between the ages of fourteen and eighteen years who has successfully completed an approved driver education course. However, the completion of a course is not required if the applicant demonstrates to the satisfaction of the department that completion of the course would impose a hardship upon the applicant. The department shall adopt rules under chapter 17A defining the term "*hardship*" and establish procedures for the demonstration and determination of when completion of the course would impose a hardship upon an applicant. The school license entitles the holder, while having the license in immediate possession, to operate a motor vehicle during the hours of 6 a.m. to 10 p.m. over the most direct and accessible route between the licensee's residence and schools of enrollment and between schools of enrollment for the purpose of attending duly scheduled courses of instruction and extracurricular activities at the schools or at any time when accompanied by a parent or guardian, member of the license holder's immediate family if the family member is at least twenty-one years of age, driver education instructor, or prospective driver education instructor who is a holder of a valid operator's or chauffeur's license, and who is actually occupying a seat beside the driver. The license shall expire on the licensee's eighteenth birthday or upon issuance of a restricted license under section 321.178, subsection 2, or operator's license. Parental consent given for the issuance of a school license under this section shall not be deemed to be consent given under section 321.184 for the issuance of any other permit or license applied for by the school license applicant.

Each application shall be accompanied by a statement from the school board or superintendent of the applicant's school. The statement shall be upon a form provided by the department. The school board or superintendent shall certify that a need exists for the license and that the board and superintendent are not responsible for actions of the applicant which pertain to the use of the school license. The department of education shall adopt rules pursuant to chapter 17A establishing criteria for issuing a statement of necessity. Upon receipt of a statement of necessity, the department shall issue a school license. The fact that the applicant resides at a distance less than one mile from the applicant's schools of enrollment is prima facie evidence of the nonexistence of necessity for the issuance of a license. A school license shall not be issued for purposes of attending a public school in a school district other than the district of residence, or a district which is contiguous to the district of residence, of the parent or guardian of the student, if the student is enrolled in the public school which is not the school district of residence because of open enrollment under section 282.18 or as a result of an election by the student's district of residence to enter into one or more sharing agreements pursuant to the procedures in chapter 282.

A license issued under this section is subject to suspension or revocation in like manner as any other license or permit issued under a law of this state. The department may also suspend a license upon receiving satisfactory evidence that the licensee has violated the restrictions of the license or has been involved in one or more accidents chargeable to the licensee. The department may suspend a license issued under this section and a permit issued under section 321.180 upon receiving a record of the licensee's conviction for one violation. The department shall revoke the license and any permit issued under section 321.180 upon receiving a record of conviction for two or more violations of a law of this state or a city ordinance regulating the operation of motor vehicles on highways other than parking violations as defined in section 321.210. After revoking a license or permit under this section the department shall not grant an application for a new

license or permit until the expiration of one year or until the licensee's sixteenth birthday whichever is the longer period.

89 Acts, ch 266, §2 SF 157  
Section amended

### **321.195 Duplicate certificates, motor vehicle licenses, and nonoperator's identification cards.**

In the event that a motor vehicle license, nonoperator's identification card, or extension certificate issued under the provisions of this chapter is lost or destroyed, the person to whom the same was issued may upon payment of a fee of three dollars for a motor vehicle license or nonoperator's identification card, or one dollar for an extension certificate, obtain a duplicate, or substitute thereof, upon furnishing proof satisfactory to the department that the motor vehicle license, nonoperator's identification card, or extension certificate has been lost or destroyed. A fee of one dollar shall be charged for the voluntary replacement of a motor vehicle license or nonoperator's identification card.

89 Acts, ch 317, §33 SF 531  
Section 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 seventeen years, eleven months 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.

89 Acts, ch 296, §31 SF 141  
Unnumbered paragraph 1 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 321L.4, 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.

89 Acts, ch 247, §6 HF 745  
Unnumbered paragraph 9 amended

### **321.211 Notice and hearing—appropriation.**

Upon suspending the license of a person as authorized, the department shall immediately notify the licensee in writing and upon the licensee's request shall afford the licensee an opportunity for a hearing before the department of inspections and appeals as early as practical within thirty days after receipt of the request. The hearing shall be held by telephone conference unless the licensee and the department of inspections and appeals agree to hold the hearing in the county in which the licensee resides or in some other county. Upon the hearing the department of inspections and appeals may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a re-examination of the licensee. Upon the hearing and issuance of a recommendation by the department of inspections and appeals, the state department of transportation shall either rescind its order of suspension or for good cause may extend the suspension of the license or revoke the license. This section does not preclude the director from attempting to effect an informal settlement under chapter 17A.

There is appropriated each year from the road use tax fund to the department of transportation one hundred twenty-five thousand dollars or as much thereof as is necessary to be used to pay the cost of notice and personal delivery of service, as necessary to meet the notice requirement of this section. The department shall

adopt rules governing the payment of the cost of personal delivery of service. The reinstatement fees collected under section 321.191 shall be deposited in the road use tax fund in the manner provided in section 321.192, as reimbursement for the costs of notice under this section.

A peace officer stopping a person for whom a notice of a suspension or revocation has been issued or to whom a notice of a hearing has been sent under the provisions of this section may personally serve such notice upon forms approved by the department to satisfy the notice requirements of this section. The peace officer may confiscate the motor vehicle license of such person if the license has been revoked or has been suspended subsequent to a hearing and the person has not forwarded the motor vehicle license to the department as required.

89 Acts, ch 273, §1 HF 163; 89 Acts, ch 317, §34 SF 531

See Code editor's note to §22.7

Unnumbered paragraph 1 amended and divided

### **321.213 License suspensions or revocations due to violations by juvenile drivers.**

Upon the entering of an order at the conclusion of an adjudicatory hearing under section 232.47 that the child violated a provision of this chapter or chapter 321A or chapter 321J for which the penalty is greater than a simple misdemeanor, the clerk of the juvenile court in the adjudicatory hearing shall forward a copy of the adjudication to the department. Notwithstanding section 232.55, a final adjudication in a juvenile court that the child violated a provision of this chapter or chapter 321A or chapter 321J constitutes a final conviction of a violation of a provision of this chapter or chapter 321A or chapter 321J for purposes of section 321.189, subsection 2, paragraph "b", and sections 321.193, 321.194, 321.200, 321.209, 321.210, 321.215, 321A.17, 321J.2, 321J.3, and 321J.4.

89 Acts, ch 296, §32 SF 141

Section amended

### **321.216 Unlawful use of license.**

It is a simple misdemeanor for any person:

1. To display or cause or permit to be displayed or have in the person's possession any canceled, revoked, suspended, fictitious or fraudulently altered temporary driver's permit, temporary instruction permit, motorized bicycle license, operator's license, or chauffeur's license.
2. To lend that person's temporary driver's permit, temporary instruction permit, motorized bicycle license, operator's license, or chauffeur's license to any other person or knowingly permit the use thereof by another.
3. To display or represent as one's own any temporary driver's permit, temporary instruction permit, motorized bicycle license, operator's license, or chauffeur's license not issued to that person.
4. To fail or refuse to surrender to the department upon its lawful demand any temporary driver's permit, temporary instruction permit, motorized bicycle license, operator's license, or chauffeur's license which has been suspended, revoked, or canceled.
5. To use a false or fictitious name in any application for a temporary driver's permit, temporary instruction permit, motorized bicycle license, operator's license, or chauffeur's license or to knowingly make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application.
6. To permit any unlawful use of a temporary driver's permit, temporary instruction permit, motorized bicycle license, operator's license, or chauffeur's license issued to that person.
7. To obtain, possess or have in one's control or on one's premises blank motor vehicle license forms.

8. To obtain, possess, or have in one's control or on one's premises a motor vehicle license, a nonoperator's identification card, or a blank motor vehicle license form, which has been made by a person having no authority or right to make the license, card, or form.

89 Acts, ch 84, §1 SF 121  
NEW subsection 8

### **321.216A Falsifying motor vehicle licenses and forms and nonoperator's identification cards.**

It is a serious misdemeanor for any person to make a motor vehicle license, a nonoperator's identification card, or a blank motor vehicle license form if the person has no authority or right to make the license, card, or form.

89 Acts, ch 84, §2 SF 121  
NEW section

### **321.218 Driving without valid license—penalties.**

1. A person whose operator's or chauffeur's license or driving privilege has been denied, canceled, suspended, or revoked as provided in this chapter, and who drives a motor vehicle upon the highways of this state while the license or privilege is denied, canceled, suspended, or revoked, commits a simple misdemeanor.

2. However, a person whose license or driving privilege has been revoked under section 321.209, and who drives a motor vehicle upon the highways of this state while the license or privilege is revoked, commits a serious misdemeanor.

3. The sentence imposed under this section shall not be suspended by the court, notwithstanding section 907.3 or any other statute.

4. The department, upon receiving the record of the conviction of a person under this section upon a charge of driving a motor vehicle while the license of the person was suspended or revoked, shall, except for licenses suspended under section 321.513, extend the period of suspension or revocation for an additional like period, and the department shall not issue a new license during the additional period.

5. A person operating a motorized bicycle on the highways of the state and not possessed of an operator's or chauffeur's license or a valid motorized bicycle license, is, upon conviction, guilty of a simple misdemeanor.

89 Acts, ch 83, §43 SF 112  
Section amended

### **321.275 Operation of motorcycles and motorized bicycles.**

1. *General.* The motor vehicle laws apply to the operators of motorcycles and motorized bicycles to the extent practically applicable.

2. *Riders.*

a. *Motorized bicycles.* A person operating a motorized bicycle on the highways shall not carry any other person on the vehicle.

b. *Motorcycles.* A person shall not operate or ride a motorcycle on the highways with another person on the motorcycle unless the motorcycle is designed to carry more than one person. The additional passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the motorcycle at the rear of the operator. The motorcycle shall be equipped with footrests for the passenger unless the passenger is riding in a sidecar or enclosed cab. The motorcycle operator shall not carry any person nor shall any other person ride in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

3. *Sitting position.* A person operating a motorcycle or motorized bicycle shall ride only upon the vehicle's permanent and regular attached seat. Every person riding upon the vehicle shall be sitting astride the seat, facing forward with one leg on either side of the vehicle.

4. *Use of traffic lanes.* Persons shall not operate motorcycles or motorized bicycles more than two abreast in a single lane. Except for persons operating such vehicles two abreast, a motor vehicle shall not be operated in a manner depriving a motorcycle or motorized bicycle operator of the full use of a lane. A motorcycle or motorized bicycle shall not be operated between lanes of traffic or between adjacent lines or rows of vehicles. The operator of a motorcycle or motorized bicycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken unless the vehicle being overtaken is a motorcycle or motorized bicycle.

5. *Headlights on.* A person shall not operate a 1977 or later model year motorcycle or any model year motorized bicycle upon the highways without displaying at least one lighted headlamp of the type described in section 321.409. However, this subsection is subject to the exceptions with respect to parked vehicles as provided in this chapter.

6. *Packages.* The operator of a motorcycle or motorized bicycle shall not carry any package, bundle, or other article which prevents the operator from keeping both hands on the handlebars.

7. *Handlebars.* A person shall not operate a motorcycle or motorized bicycle with handlebars more than fifteen inches in height above that portion of the seat occupied by the operator.

8. *Parades.* The provisions of this section do not apply to motorcycles or motorized bicycles when used in a parade authorized by proper permit from local authorities.

9. *Bicycle safety flags required on motorized bicycles.* When operated on a highway, a motorized bicycle shall have a bicycle safety flag which extends not less than five feet above the ground attached to the rear of the motorized bicycle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty square inches, and be Day-Glo in color.

89 Acts, ch 184, §1 HF 663  
NEW subsection 9

### **321.288 Control of vehicle—reduced speed.**

A person operating a motor vehicle shall have the vehicle under control at all times and shall reduce the speed to a reasonable and proper rate:

1. When approaching and passing a person walking in the traveled portion of the public highway.

2. When approaching and passing an animal which is being led, ridden, or driven upon a public highway.

3. When approaching and traversing a crossing or intersection of public highways, or a bridge, sharp turn, curve, or steep descent, in a public highway.

4. When approaching and passing an emergency warning device displayed in accordance with rules adopted under section 321.449, or an emergency vehicle displaying a revolving or flashing light.

5. When approaching and passing a slow moving vehicle displaying a reflective device as provided by section 321.383.

6. When approaching and passing through a sign posted construction or maintenance zone upon the public highway.

89 Acts, ch 296, §33 SF 141  
Section amended

### **321.299 Overtaking a vehicle.**

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of the overtaken vehicle until completely passed by the overtaking vehicle.

89 Acts, ch 296, §34 SF 141  
Unnumbered paragraph 3 amended

### **321.323 Moving vehicle backward on highway.**

A person shall not cause a vehicle to be moved in a backward direction on a highway unless and until the vehicle can be backed with reasonable safety, and shall yield the right of way to any approaching vehicle on the highway or an intersecting highway which is so close as to constitute an immediate hazard.

89 Acts, ch 296, §35 SF 141  
Section amended

### **321.358 Stopping, standing or parking.**

No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control device, in any of the following places:

1. On a sidewalk, except a bicycle may stop, stand, or park on a sidewalk if not prohibited by a local jurisdiction.
2. In front of a public or private driveway.
3. Within an intersection.
4. Within five feet of a fire hydrant.
5. On a crosswalk.
6. Within ten feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway.
7. Between a safety zone and the adjacent curb or within ten feet of points on the curb immediately opposite the ends of a safety zone, unless any city indicates a different length by signs or markings.
8. Within fifty feet of the nearest rail of a railroad crossing, except when parked parallel with such rail and not exhibiting a red light.
9. Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of said entrance when properly signposted.
10. Alongside or opposite any street excavation or obstruction when such stopping, standing, or parking would obstruct traffic.
11. On the roadway side of any vehicle stopped or parked at the edge or curb of a street.
12. Upon any bridge or other elevated structure upon a highway outside of cities or within a highway tunnel.
13. At any place where official signs prohibit stopping or parking.
14. Upon any street within the corporate limits of a city when the same is prohibited by a general ordinance of uniform application relating to removal of snow or ice from the streets.
15. In front of a curb cut or ramp which is located on public or private property in a manner which blocks access to the curb cut or ramp.

89 Acts, ch 247, §7 HF 745  
NEW subsection 15

### **321.375 Drivers—qualifications—grounds for suspension.**

The drivers of school buses must: (1) be at least eighteen years of age, unless such person has successfully completed an approved driver education course, in which case, the minimum age shall be sixteen years, (2) be physically and mentally competent, (3) not possess personal or moral habits which would be detrimental to the best interests of safety and welfare of the children transported,

(4) have an annual physical examination and meet all established requirements for physical fitness.

Use of nonprescription controlled substances or alcoholic beverages during working hours, operating a school bus while under the influence of nonprescription controlled substances or alcoholic beverages, fraud in the procurement or renewal of a school bus driver's permit, the commission of or conviction for a public offense as defined by the Iowa criminal code, if the offense is relevant to and affects driving ability, or sexual involvement with a minor student with the intent to commit or the commission of acts and practices proscribed under sections 709.2 through 709.4, section 709.8, and sections 725.1 through 725.3 shall constitute grounds for the driver's immediate suspension from duties, pending a termination hearing by the board.

89 Acts, ch 210, §13 SF 450

Unnumbered paragraph 2 stricken and rewritten

### **321.376 License—permit—instruction requirement.**

The driver of every school bus shall have a regular or special chauffeur's license issued by the department, and in addition thereto, must hold a school bus driver's permit issued by the department of education.

A person applying for a school bus driver's permit for the first time shall have enrolled in and successfully completed an approved course of instruction for school bus drivers, as programmed by the department of education, before a permit may be issued by the department. Certification of course completion shall be submitted to the department of education, prior to issuance of a permit, by an authorized program instructor on forms provided by the department of education.

A person applying for employment or employed as a school bus driver shall successfully complete a course of instruction for school bus drivers before or within the first six months of employment. If an employee fails to provide an employer with a certificate of completion of an approved school bus driver's course within the first six months of employment as a school bus driver, the driver's employer shall report the failure to the department and the employee's school bus driver's permit shall be revoked. The department shall send notice of the revocation of the employee's permit to both the employee and the employer. A person whose school bus driver's permit has been revoked under this section shall not be issued a school bus driver's permit until certification of the completion of an approved school bus driver's course is received by the department.

89 Acts, ch 222, §1 SF 295

Unnumbered paragraph 2 stricken and rewritten as 2 paragraphs

### **321.393 Color and mounting.**

A lighting device or reflector, when mounted on or near the front of a motor truck or trailer, except a school bus, shall not display any other color than white, yellow, or amber.

No lighting device or reflector, when mounted on or near the rear of any motor truck or trailer, shall display any other color than red, except that the stop light may be red, yellow, or amber.

Clearance lamps shall be mounted on the permanent structure of the vehicle in such manner as to indicate the extreme width of the vehicle or its load.

The provisions of this section shall not prohibit the use of a lighting device or reflector displaying an amber light when such lighting device or reflector is mounted on a motor truck, trailer, tractor, or motor grader owned by the state, or any political subdivision of the state, or any municipality therein, while such equipment is being used for snow removal, sanding, maintenance, or repair of the public streets or highways.

89 Acts, ch 83, §44 SF 112

Unnumbered paragraph 1 amended

**321.407 Courtesy lamps.** Repealed by 89 Acts, ch 296, §96.SF 141**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. However, rules adopted under this section concerning tank specifications shall not apply to cargo tank motor vehicles with a capacity of four thousand gallons or less used to transport gasoline in intrastate commerce, which were manufactured between 1950 and 1979 and are in compliance with the American society of mechanical engineers specifications in effect at the time of manufacture.

Notwithstanding other provisions of this section, rules adopted under this section concerning physical and medical qualifications for drivers of commercial vehicles engaged in intrastate commerce shall not be construed as disqualifying any individual who was employed as a driver of commercial vehicles engaged in intrastate commerce prior to January 1, 1988.

Notwithstanding other provisions of this section, or the age requirements under section 321.449, the age requirements under section 321.449 and the rules adopted under this section pertaining to compliance with regulations adopted under U.S.C., Title 49, and found in 49 C.F.R. §177.804, shall not apply to retail dealers of fertilizers, petroleum products, and pesticides and their employees while delivering fertilizers, petroleum products, and pesticides to farm customers within a one-hundred-mile radius of their retail place of business. Notwithstanding contrary provisions of this chapter, motor vehicles registered for a maximum gross weight of five tons or less shall be exempt from the requirements of placarding and of carrying hazardous materials shipping papers if the hazardous materials which are transported are clearly labeled.

89 Acts, ch 70, §1, 2 SF 442; 89 Acts, ch 186, §1 HF 792  
NEW unnumbered paragraphs 2 and 3

**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 or truck tractor-semitrailer-semitrailer combination. When the semitrailers in a truck tractor-semitrailer-semitrailer combination are connected by a rigid frame extension including a fifth-wheel connection point attached to the rear frame of the first semitrailer, the length of the frame extension shall not be included when determining the overall length of the first semitrailer.

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.

d. In a combination of vehicles used principally for hauling livestock or a stinger-steered automobile transporter operating under this subsection and section 321.454, subsection 2, the combination of vehicles used principally for hauling livestock or the stinger-steered automobile transporter may depart from the designated highway system by the most direct route to points of pickup and

delivery. Vehicles operating under this paragraph are not exempt from posted size and weight restrictions on highway structures.

e. A stinger-steered automobile transporter shall not have an overall length exceeding seventy-five feet, except that the load may extend up to three feet beyond the front bumper and up to four feet beyond the rear bumper.

The commission shall adopt rules to designate the highways. The rules adopted by the department under this paragraph are exempt from chapter 17A, the Iowa administrative procedure Act.

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.

89 Acts, ch 34, §2-5 SF 120  
 Subsection 3, paragraph b and d amended  
 Subsection 3, NEW paragraph e  
 Subsection 3, unnumbered paragraph 2 amended

### **321.463 Maximum gross weight.**

An axle may be divided into two or more parts, except that all parts in the same vertical transverse plane shall be considered as one axle.

The gross weight on any one axle of a vehicle, or of a combination of vehicles, operated on the highways of this state, shall not exceed twenty thousand pounds on an axle equipped with pneumatic tires, and shall not exceed fourteen thousand pounds on an axle equipped with solid rubber tires. The gross weight on any tandem axle of a vehicle, or any combination of vehicles, shall not exceed thirty-four thousand pounds on an axle equipped with pneumatic tires.

A group of two or more consecutive axles of any vehicle or combination of vehicles, shall not carry a load in pounds in excess of the overall gross weight determined by application of the following formula:  $W$  equals  $500(LN/N-1 + 12N + 36)$ .  $W$  equals the overall gross weight on any group of two or more consecutive axles to the nearest five hundred pounds,  $L$  equals the distance in feet, rounded to the nearest whole foot, between the extreme of any group of two or more consecutive axles, and  $N$  equals the number of axles in the group under consideration. The following are exceptions to application of the formula:

1. Two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each providing the overall distance between the first and last axles of the consecutive sets of tandem axles is thirty-six feet or more.

2. On highways not part of the interstate system, a vehicle or combination of vehicles having:

a. Four axles where the extreme axles are eighteen feet apart may carry a gross load of fifty-three thousand pounds.

b. Five axles where the extreme axles are thirty-two feet apart may carry a gross load of sixty-seven thousand five hundred pounds.

c. Six or more axles where the extreme axles are forty-one feet apart may carry a gross load of seventy-eight thousand pounds.

For every foot of distance between extreme axles less than the above axle spacings, the overall gross weight of the vehicle or combination of vehicles shall be determined by deducting one thousand pounds from the gross loads specified in paragraphs "a", "b" and "c". All measurements between extreme axles shall be rounded to the nearest whole foot.

The maximum gross weight shall not exceed eighty thousand pounds.

The weight on any one axle, including a tandem axle, of a vehicle which is transporting livestock on highways not part of the interstate system may exceed the legal maximum weight given in this chapter providing that the gross weight on any particular group of axles on such vehicle does not exceed the gross weight allowable under this chapter for such groups of axles.

In addition, the weight on any one axle, including a tandem axle, of a vehicle which is transporting raw materials which are removed from a road under construction, may exceed the legal maximum weight otherwise allowed under this chapter by ten percent if the gross weight on any particular group of axles on the vehicle does not exceed the gross weight allowed under this chapter for that group of axles. However, if the vehicle exceeds the ten percent tolerance allowed for any one axle or tandem axle under this paragraph the fine to be assessed for the axle or tandem axle shall be computed on the difference between the actual weight and the ten percent tolerance weight allowed for the axle or tandem axle under this paragraph. This paragraph applies only to vehicles operating along a route of travel approved by the department.

A person who operates a vehicle in violation of the provisions of this section, and an owner, or any other person, employing or otherwise directing the operator of a vehicle, who requires or knowingly permits the operation of a vehicle in violation of the provisions of this section shall be fined according to the following schedule:

#### AXLE, TANDEM AXLE, AND GROUP OF AXLES WEIGHT VIOLATIONS

Pounds Overloaded	Amount of Fine
Up to and including 1,000 pounds	\$10 plus one-half cent per pound
Over 1,000 pounds to and including 2,000 pounds	\$15 plus one-half cent per pound
Over 2,000 pounds to and including 3,000 pounds	\$80 plus three cents per pound
Over 3,000 pounds to and including 4,000 pounds	\$100 plus four cents per pound
Over 4,000 pounds to and including 5,000 pounds	\$150 plus five cents per pound
Over 5,000 pounds to and including 6,000 pounds	\$200 plus seven cents per pound
Over 6,000 pounds	\$200 plus ten cents per pound

Fines for gross weight violations for vehicles or combinations of vehicles shall be assessed at one-half of the fine rate schedule for axle, tandem axle, and groups of axles weight violations.

Except as otherwise provided, the amount of the fine to be assessed shall be computed on the difference between the actual weight and the maximum legal weight specified in this section by applying the appropriate rate in the preceding schedule for the total amount of overload.

The schedule of fines may be assessed in addition to any other penalties provided for in this chapter.

Overloads on axles and tandem axles and overloads on groups of axles or on an entire vehicle or combination of vehicles shall be considered as separate violations of the provisions of this section.

A person who issues or executes, or causes to be issued or executed, a bill of lading, manifest, or shipping document of any kind which states a false weight of the cargo

set forth on such bill, manifest, or document, which is less than the actual weight of the cargo, shall, upon conviction, be guilty of a simple misdemeanor.

89 Acts, ch 200, §1, 2 SF 256  
NEW unnumbered paragraph 6  
Former unnumbered paragraph 8 (now 9) amended

### **321.484 Offenses by owners.**

It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

The owner of a vehicle shall not be held responsible for a violation of a provision regulating the stopping, standing, or parking of a vehicle, whether the provision is contained in this chapter, or chapter 321L, or an ordinance or other regulation or rule, if the owner establishes that at the time of the violation the vehicle was in the custody of an identified person other than the owner pursuant to a lease as defined in chapter 321F. The furnishing to the clerk of the district court where the charge is pending of a copy of the certificate of responsibility prescribed by section 321F.6 that was in effect for the vehicle at the time of the alleged violation shall be prima facie evidence that the vehicle was in the custody of an identified person other than the owner within the meaning of this paragraph, and the charge against the owner shall be dismissed. The clerk of the district court then shall cause a uniform citation and complaint to be issued against the lessee of the vehicle, and the citation shall be served upon the defendant by ordinary mail directed to the defendant at the address shown in the certificate of responsibility.

If a peace officer as defined in section 801.4 has reasonable cause to believe the driver of a motor vehicle has violated sections 321.261, 321.262, 321.264, or 321.372, the officer may request any owner of the motor vehicle to supply information identifying the driver. When requested, the owner of the vehicle shall identify the driver to the best of the owner's ability. However, the owner of the vehicle is not required to supply identification information to the officer if the owner believes the information is self-incriminating.

89 Acts, ch 247, §8 HF 745  
Unnumbered paragraph 2 amended

### **321.555 Habitual offender defined.**

As used in this division, "habitual offender" means any person who has accumulated convictions for separate and distinct offenses described in subsections 1, 2, or 3, committed after July 1, 1974, for which final convictions have been rendered, as follows:

1. Three or more of the following offenses, either singularly or in combination, within a six-year period:

- a. Manslaughter resulting from the operation of a motor vehicle.
- b. Operating a motor vehicle in violation of section 321J.2 or its predecessor statute.
- c. Driving a motor vehicle while operator's or chauffeur's license is suspended or revoked.
- d. Perjury or the making of a false affidavit or statement under oath to the department of public safety.
- e. An offense punishable as a felony under the motor vehicle laws of Iowa or any felony in the commission of which a motor vehicle is used.
- f. Failure to stop and leave information or to render aid as required by section 321.263.

2. Six or more of any separate and distinct offenses within a two-year period in the operation of a motor vehicle, which are required to be reported to the department by section 321.207 or chapter 321C, except equipment violations, parking violations as defined in section 321.210, violations of registration laws, violations of sections 321.445 and 321.446, operating a vehicle with an expired

license or permit, failure to appear, weights and measures violations and speeding violations of less than fifteen miles per hour over the legal speed limit.

3. The offenses included in subsections 1 and 2 shall be deemed to include offenses under any valid town, city or county ordinance paralleling and substantially conforming to the provisions of the Code concerning such offenses.

89 Acts, ch 296, §36 SF 141  
Subsection 1, paragraph b 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, 321J, or this chapter. The abstract shall also fully designate the motor vehicles, if any, registered in the name of the person. If there is no record of a conviction of the person having violated any law relating to the operation of a motor vehicle or of any injury or damage caused by the person, the director shall so certify. A fee of five dollars shall be paid for each abstract except by state, county, city or court officials. The director shall transfer the moneys collected under this section to the treasurer of state who shall credit annually to the abstract fee fund created under section 321A.3A the first one million three hundred fifty thousand dollars collected and shall credit to the general fund all additional moneys collected.

2. A sheriff may provide an abstract of the operating record of a person to the person or an individual authorized by the person. The sheriff shall charge a fee of five dollars 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 occurring on or after July 1, 1986, but before May 12, 1987, are for violations of ten miles per hour or less over the legal speed limit in speed zones that have a legal speed limit greater than thirty-five miles per hour. For speeding violations occurring on or after May 12, 1987, the abstract provided under this section shall designate which speeding violations are for ten miles per hour or less over the legal speed limit in speed zones that have a legal speed limit equal to or greater than thirty-five miles per hour but not greater than fifty-five miles per hour.

5. The director may permit any person to view the operating record of a person subject to chapter 321 or this chapter through one of the department's computer terminals or through a computer printout generated by the department. The director shall not require a fee for a person to view their own operating record, but the director shall impose a fee of one dollar for each of the first five operating records viewed within a calendar day and two dollars for each additional operating record viewed within the calendar day.

6. Fees under subsections 1 and 5 may be paid by credit cards, as defined in section 537.1301, subsection 16, approved for that purpose by the director of transportation. The director shall enter into agreements with financial institutions extending credit through the use of credit cards to ensure payment of the fees. The director shall adopt rules pursuant to chapter 17A to implement the provisions of this subsection.

7. Notwithstanding chapter 22 or any other law of this state, except as provided in subsection 5, the director shall not make available an operating record in a manner which would result in a fee of less than that provided under subsection 1. Should the director make available copies of abstracts of operating records on magnetic tape or on disk or through electronic data transfer, the five dollar fee under subsection 1 applies to each abstract supplied.

89 Acts, ch 296, §37 SF 141; 89 Acts, ch 317, §35 SF 531  
See Code editor's note to §22.7  
Subsection 1 amended

### **321A.3A Abstract fee fund.**

1. There is created the abstract fee fund. Moneys shall be credited from the abstract fee fund as appropriated by the general assembly.

2. The treasurer of state, after crediting moneys appropriated from the abstract fee fund, shall credit monthly to the state department of transportation moneys sufficient in amount to pay the costs of purchasing motor vehicle licenses, as defined in section 321.1, subsection 77.

89 Acts, ch 317, §36 SF 531  
Moneys charged to other funds under certain conditions; accounting; 89 Acts, ch 317, §43 SF 531  
Subsection 2 amended

### **321A.17 Proof required upon certain convictions.**

1. Whenever the director, under any law of this state, suspends or revokes the license of any person upon receiving record of a conviction or a forfeiture of bail or revokes the license of any person pursuant to chapter 321J, the director shall also suspend the registration for all motor vehicles registered in the name of the person, except that the director shall not suspend the registration, unless otherwise required by law, if the person has previously given or immediately gives and thereafter maintains proof of financial responsibility with respect to all motor vehicles registered by the person.

2. Such license and registration shall remain suspended or revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under the motor vehicle laws of this state and not then unless and until the person shall give and thereafter maintain proof of financial responsibility.

3. If a person is not licensed, but by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the suspension or revocation of license, or for operating an unregistered motor vehicle upon the highways, no license shall be thereafter issued to such person and no motor vehicle shall continue to be registered or thereafter be registered in the name of such person until the person shall give and thereafter maintain proof of financial responsibility.

4. Whenever the director suspends or revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so suspended or revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility.

5. An individual applying for a motor vehicle license following a period of suspension or revocation under section 321.210A, 321.216 or 321.513, or following a period of suspension under section 321.194, is not required to maintain proof of financial responsibility under this section.

89 Acts, ch 266, §3 SF 157  
Subsection 5 amended

## CHAPTER 321E

### MOVEMENT OF VEHICLES OF EXCESSIVE SIZE AND WEIGHT

#### 321E.19 Permit suspended, changed, or revoked.

Upon complaint by local authorities or on the department's own initiative and after notice and hearing before one or more members of the permit issuing body in the case of local authorities or the department of inspections and appeals for permits issued by the state department of transportation, permit privileges under this chapter may be suspended, changed, or revoked in whole or in part by the issuing authority for willful failure to comply with a provision of this chapter, a rule adopted under this chapter, or a term, condition, or limitation of the permit.

89 Acts, ch 273, §2 HF 163  
Section amended

#### 321E.30 Verification of mobile home permit to county treasurer.

Verification of the permits issued by the state or county to move mobile homes shall be sent to the county treasurer of the county of final destination by the permit issuing officers. A one dollar fee shall be added to the permit charge to cover the costs of this service.

89 Acts, ch 83, §45 SF 112  
Section amended

## CHAPTER 321G

### SNOWMOBILES AND ALL-TERRAIN VEHICLES

1989 amendments to chapter 321G by 89 Acts, ch 244, take effect January 1, 1990; 89 Acts, ch 244, §42 HF 477

#### 321G.1 Definitions.

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

1. "*All-terrain vehicle*" means a motorized flotation-tire vehicle with not less than three low pressure tires, but not more than six low pressure tires, that is limited in engine displacement to less than eight hundred cubic centimeters and in total dry weight to less than seven hundred fifty pounds and that has a seat or saddle designed to be straddled by the operator and handlebars for steering control.
2. "*'A' scale*" means the physical scale marked "A" graduated in decibels on a sound level meter which meets the requirements of the American national standards institute, incorporated, publication S1.4-1961, general purpose sound level meters.
3. "*Commission*" means the natural resource commission of the department.
4. "*Dealer*" means a person engaged in the business of buying, selling, or exchanging all-terrain vehicles or snowmobiles required to be registered under this chapter and who has an established place of business for that purpose in this state.
5. "*Department*" means the department of natural resources.
6. "*Established place of business*" means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the books and records are kept and the dealer's or manufacturer's business is primarily transacted.
7. "*Manufacturer*" means a person engaged in the business of constructing or assembling all-terrain vehicles or snowmobiles required to be registered under this chapter and who has an established place of business for that purpose in this state.
8. "*Measurable snow*" means one-tenth of one inch of snow.

9. *“Operate”* means to ride in or on, other than as a passenger, use, or control the operation of an all-terrain vehicle or snowmobile in any manner, whether or not the all-terrain vehicle or snowmobile is moving.

10. *“Operator”* means a person who operates or is in actual physical control of an all-terrain vehicle or snowmobile.

11. *“Owner”* means a person, other than a lienholder, having the property right in or title to an all-terrain vehicle or snowmobile. The term includes a person entitled to the use or possession of an all-terrain vehicle or snowmobile subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

12. *“Person”* means an individual, partnership, firm, corporation, association, and the state, its agencies, and political subdivisions.

13. *“Railroad right of way”* shall mean the full width of property owned, leased or subject to easement for railroad purposes and shall not be limited to those areas on which tracks are located.

14. *“Roadway”* means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

15. *“Safety certificate”* means an all-terrain vehicle or snowmobile safety certificate issued by the commission to a qualified applicant who is twelve years of age or more.

16. *“Snowmobile”* means a motorized vehicle weighing less than one thousand pounds which uses sled-type runners or skis, endless belt-type tread, or any combination of runners, skis, or tread, and is designed for travel on snow or ice.

17. *“Special event”* means an organized race, exhibition, or demonstration of limited duration which is conducted according to a prearranged schedule and in which general public interest is manifested.

18. *“Street”* or *“highway”* means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular travel, except in public areas in which the boundary shall be thirty-three feet each side of the center line of the roadway.

89 Acts, ch 244, §1-3 HF 477

See Code editor's note

NEW subsections 1, 3 and 5

Subsections 4, 7, 9, 10, 11 and 15 amended

Subsection 16 stricken and rewritten

### 321G.2 Rules.

The commission may adopt rules for the following purposes:

1. Registration of all-terrain vehicles and snowmobiles.
2. Use of all-terrain vehicles and snowmobiles as far as game and fish resources or habitats are affected.
3. Use of all-terrain vehicles and snowmobiles on public lands under the jurisdiction of the commission.
4. Use of all-terrain vehicles and snowmobiles on any waters of the state under the jurisdiction of the commission, while the waters are frozen.
5. Establish a program of grants, subgrants, and contracts to be administered by the department for the development and delivery of certified courses of instruction for the safe use and operation of all-terrain vehicles and snowmobiles by political subdivisions and incorporated private organizations.
6. Issuance of safety certificates.
7. Issuance of competition registrations and the participation of all-terrain vehicles and snowmobiles so registered in special events.

The director of transportation may adopt rules not inconsistent with this chapter regulating the use of all-terrain vehicles and snowmobiles on streets and highways. Cities may designate streets under the jurisdiction of cities within their

respective corporate limits which may be used for snowmobiling and the sport of driving all-terrain vehicles.

In adopting the rules, consideration shall be given to the need to protect the environment and the public health, safety, and welfare; to protect private property, public parks, and other public lands; to protect wildlife and wildlife habitat; and to promote uniformity of rules relating to the use, operation, and equipment of all-terrain vehicles and snowmobiles. The rules shall be in conformance with chapter 17A.

89 Acts, ch 244, §4 HF 477  
Section amended

### **321G.3 Registration and numbering required.**

Each all-terrain vehicle and snowmobile used on public land or ice of this state shall be currently registered and numbered. A person shall not operate, maintain, or give permission for the operation or maintenance of an all-terrain vehicle or snowmobile on public land or ice unless the all-terrain vehicle or snowmobile is numbered in accordance with this chapter, or in accordance with applicable federal laws, or in accordance with an approved numbering system of another state, and unless the identifying number set forth in the registration is displayed on each side of the forward half of the snowmobile and on the rear fender of the all-terrain vehicle.

A registration number shall be assigned, without payment of fee, to all-terrain vehicles and snowmobiles owned by the state of Iowa or its political subdivisions upon application for the number, and the assigned registration number shall be displayed on the all-terrain vehicle or snowmobile as required under section 321G.5.

89 Acts, ch 244, §5 HF 477  
Section amended

### **321G.4 Registration with county recorder—fee.**

The owner of each all-terrain vehicle or snowmobile required to be numbered shall register it every two years with the county recorder of the county in which the owner resides or, if the owner is a nonresident, the owner shall register it in the county in which the all-terrain vehicle or snowmobile is principally used. The commission has supervisory responsibility over the registration of all-terrain vehicles and snowmobiles and shall provide each county recorder with registration forms and certificates and shall allocate identification numbers to each county.

The owner of the all-terrain vehicle or snowmobile shall file an application for registration with the appropriate county recorder on forms provided by the commission. The application shall be completed and signed by the owner of the all-terrain vehicle or snowmobile and shall be accompanied by a fee of twenty dollars and a writing fee. An all-terrain vehicle or a snowmobile shall not be registered by the county recorder until the county recorder is presented with receipts, bills of sale, or other satisfactory evidence that the sales or use tax has been paid for the purchase of the all-terrain vehicle or snowmobile or that the owner is exempt from paying the tax. However, an owner of an all-terrain vehicle, except an all-terrain vehicle purchased new on or after January 1, 1990, may apply for registration without proof of sales or use tax paid until one year after January 1, 1990. Upon receipt of the application in approved form accompanied by the required fees, the county recorder shall enter it upon the records and shall issue to the applicant a pocket-size registration certificate. The certificate shall be executed in triplicate, one copy to be delivered to the owner, one copy to the commission, and one copy to be retained on file by the county recorder. The registration certificate shall bear the number awarded to the all-terrain vehicle or snowmobile and the name and address of the owner. The registration certificate

shall be carried either in the all-terrain vehicle or snowmobile or on the person of the operator of the machine when in use. The operator of an all-terrain vehicle or snowmobile shall exhibit the registration certificate to a peace officer upon request, to a person injured in an accident involving an all-terrain vehicle or snowmobile, or to the owner or operator of another all-terrain vehicle or snowmobile or the owner of personal or real property when the all-terrain vehicle or snowmobile is involved in a collision or accident of any nature with another all-terrain vehicle or snowmobile or the property of another person or to the property owner or tenant when the all-terrain vehicle or snowmobile is being operated on private property without permission from the property owner or tenant.

If an all-terrain vehicle or snowmobile is placed in storage, the owner shall return the current registration certificate to the county recorder with an affidavit stating that the all-terrain vehicle or snowmobile is placed in storage and the effective date of storage. The county recorder shall notify the commission of each all-terrain vehicle or snowmobile placed in storage. When the owner of a stored all-terrain vehicle or snowmobile desires to renew the registration, the owner shall make application to the county recorder and pay the registration and writing fees without penalty. A refund of the registration fee shall not be allowed for a stored all-terrain vehicle or snowmobile.

89 Acts, ch 244, §6 HF 477  
Section amended

### **321G.5 Display of identification numbers.**

The owner shall cause the identification number to be attached to each side of the forward half of a snowmobile and to the rear fender of an all-terrain vehicle in the manner prescribed by the rules of the commission. The identification number shall be maintained in legible condition at all times.

89 Acts, ch 244, §7 HF 477  
Section amended

### **321G.6 Registration—renewal—transfer.**

Every all-terrain vehicle or snowmobile registration certificate and number issued expires at midnight December 31, and renewals expire every two years thereafter unless sooner terminated or discontinued in accordance with this chapter. After the first day of September each even-numbered year, an unregistered all-terrain vehicle or snowmobile and renewals may be registered for the subsequent biennium beginning January 1. An all-terrain vehicle or snowmobile registered between January 1 and September 1 of even-numbered years shall be registered for a fee of ten dollars for the remainder of the registration period.

After the first day of September in even-numbered years an unregistered all-terrain vehicle or snowmobile may be registered for the remainder of the current registration period and for the subsequent registration period in one transaction. The fee shall be five dollars for the remainder of the current period, in addition to the registration fee of twenty dollars for the subsequent biennium beginning January 1, and a writing fee. Registration certificates and numbers may be renewed upon application of the owner in the same manner as provided in securing the original registration. The all-terrain vehicle or snowmobile registration fee is in lieu of personal property tax for each year of the registration.

An expired all-terrain vehicle or snowmobile registration may be renewed for the same fee as if the owner is securing the original registration plus a penalty of five dollars and a writing fee.

All all-terrain vehicles used on public land must be registered within six months following January 1, 1990, unless otherwise exempt.

When a person, after registering an all-terrain vehicle or snowmobile, moves from the address shown on the registration certificate, the person shall, within

ten days, notify the county recorder in writing of the move and the person's new address.

Upon the transfer of ownership of an all-terrain vehicle or snowmobile, the owner shall complete the form on the back of a current registration certificate and shall deliver it to the purchaser or transferee at the time of delivering the all-terrain vehicle or snowmobile. The purchaser or transferee shall, within five days, file a new application form with the county recorder with a fee of one dollar and the writing fee, and a transfer of number shall be awarded in the same manner as provided in an original registration.

All registrations must be valid for the current registration period prior to the transfer of any registration, including assignment to a dealer.

Duplicate registrations may be issued upon application therefor and the payment of the same fees collected for the transfer of registrations.

89 Acts, ch 244, §8-11 HF 477  
 Unnumbered paragraphs 1 and 2 amended  
 Unnumbered paragraph 3 stricken and rewritten  
 NEW unnumbered paragraph 4  
 Unnumbered paragraphs 5 and 6 amended

### **321G.7 Fees remitted to commission—appropriation.**

Within ten days after the end of each month, a county recorder shall remit to the commission the all-terrain vehicle and snowmobile fees collected by the recorder during the previous month. Before January 10 of odd-numbered years, a recorder shall remit unused license forms from the previous biennium to the commission.

The department shall remit the fees to the treasurer of state, who shall place the money in a special conservation fund. The money is appropriated to the department for the all-terrain vehicle and snowmobile programs of the state. All-terrain vehicle fees shall be used only for all-terrain vehicle programs and snowmobile fees shall be used only for snowmobile programs. Joint programs shall be supported from both types of fees on a usage basis. The all-terrain vehicle and snowmobile programs shall include grants, subgrants, contracts, or cost-sharing of all-terrain vehicle and snowmobile programs with political subdivisions or incorporated private organizations or both in accordance with rules adopted by the commission. All all-terrain vehicle programs using cost-sharing, grants, subgrants, or contracts shall establish and implement a safety instruction program either singly or in cooperation with other all-terrain vehicle programs. At least fifty percent of the special fund shall be available for political subdivisions or incorporated private organizations or both. Moneys from the special fund not used by the political subdivisions or incorporated private organizations or both shall remain in the all-terrain vehicle or snowmobile accounts. The department may use funds from these accounts for the administration of the all-terrain vehicle and snowmobile programs.

89 Acts, ch 244, §12 HF 477; 89 Acts, ch 102, §2 SF 367  
 See Code editor's note to §22.7  
 Section stricken and rewritten

### **321G.8 Exempt vehicles.**

Registration shall not be required for the following described all-terrain vehicles and snowmobiles:

1. All-terrain vehicles and snowmobiles owned and used by the United States, another state, or a political subdivision of another state.
2. All-terrain vehicles and snowmobiles registered in a country other than the United States used within this state for not more than twenty consecutive days.
3. All-terrain vehicles and snowmobiles covered by a valid license of another state and which have not been within this state for more than twenty consecutive days.

4. All-terrain vehicles and snowmobiles not registered or licensed in another state or country being used in this state while engaged in a special event and not remaining in the state for a period of more than ten days.

5. All-terrain vehicles used in accordance with section 321.234A.

89 Acts, ch 244, §13 HF 477  
Section amended

### **321G.9 Operation on roadways and highways.**

A person shall not operate an all-terrain vehicle or snowmobile upon roadways or highways, as defined in section 321.1, except as provided in section 321.234A and this chapter.

1. Except as provided in section 321.234A, an all-terrain vehicle or snowmobile shall not be operated at any time within the right of way of any interstate highway or freeway within this state.

2. An all-terrain vehicle or snowmobile may make a direct crossing of a street or highway provided:

a. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing; and

b. The all-terrain vehicle or snowmobile is brought to a complete stop before crossing the shoulder or main traveled way of the highway; and

c. The driver yields the right of way to all oncoming traffic which constitutes an immediate hazard; and

d. In crossing a divided highway, the crossing is made only at an intersection of such highway with another public street or highway.

3. An all-terrain vehicle or snowmobile shall not be operated on public highways:

a. On the roadway portion of a highway and adjacent shoulder, or at least five feet on either side of the roadway, except as provided in subsection 4 of this section, and

b. On limited access highways and approaches, and

c. For racing any moving object, and

d. Abreast with one or more other all-terrain vehicles or snowmobiles on a city highway.

4. A registered all-terrain vehicle or snowmobile may be operated under the following conditions:

a. Upon city highways which have not been plowed during the snow season or on such highways as designated by the governing body of a municipality.

b. On that portion of county roadways that have not been plowed during the snow season or not maintained or utilized for the operation of conventional two-wheel drive motor vehicles.

c. On highways in an emergency during the period of time when and at locations where snow upon the roadway renders travel by conventional motor vehicles impractical.

d. On the roadways of that portion of county highways designated by the county board of supervisors for such use during a specified period. The county board of supervisors shall evaluate the traffic conditions on all county highways and designate roadways on which all-terrain vehicles or snowmobiles may be operated for the specified period without unduly interfering with or constituting an undue hazard to conventional motor vehicle traffic. Signs warning of the operation of all-terrain vehicles or snowmobiles on the roadway shall be placed and maintained on the portions of highway thus designated during the period specified for the operation.

e. On the roadway or shoulder when necessary to cross a bridge or culvert, or avoid an obstruction which makes it impossible to travel on the portion of the highway not intended for motor vehicles, if the snowmobile is brought to a

complete stop before entering onto the roadway or shoulder and the driver yields the right of way to any approaching vehicle on the roadway.

f. All-terrain vehicles shall not be operated on snowmobile trails except where designated by the controlling authority and the primary snowmobile trail sponsor.

g. Snowmobiles shall not be operated on all-terrain vehicle trails except where designated by the controlling authority and the primary all-terrain vehicle trail sponsor.

5. The headlight and taillight shall be lighted during the operation on a public highway at any time from sunset to sunrise, and at such other times when conditions such as fog, snow, sleet or rain provide insufficient lighting to render clearly discernible persons and vehicles at a distance of five hundred feet ahead.

6. a. An all-terrain vehicle or snowmobile shall not be operated on or across a public highway by a person under sixteen years of age who does not have in the person's possession a safety certificate issued to the person pursuant to this chapter.

b. A person twelve to fifteen years of age and possessing a valid safety certificate must be under the direct supervision of a parent, guardian, or another adult authorized by the parent or guardian, who is experienced in all-terrain vehicle or snowmobile operation, and who possesses a valid operator's or chauffeur's license, instruction permit, restricted license or temporary permit issued under chapter 321, or a safety certificate issued under this chapter.

7. An all-terrain vehicle or snowmobile shall not be operated within the right of way of a primary highway between the hours of sunset and sunrise except on the right-hand side of the right of way and in the same direction as the motor vehicular traffic on the nearest lane of traveled portion of the right of way.

89 Acts, ch 244, §14-21 HF 477

Unnumbered paragraph 1 amended

Subsection 1 amended

Subsection 2, unnumbered paragraph 1 and paragraph b amended

Subsection 3, unnumbered paragraph 1 and paragraph d amended

Subsection 4, unnumbered paragraph 1 and paragraph d amended

Subsection 4, NEW paragraphs f and g

Subsections 6 and 7 amended

### **321G.10 Accident reports.**

If an all-terrain vehicle or snowmobile is involved in an accident resulting in injury or death to anyone or property damage amounting to two hundred dollars or more, either the operator or someone acting for the operator shall immediately notify the county sheriff or another law enforcement agency in the state. The operator shall file with the commission a report of the accident, within forty-eight hours, containing information as the commission may require.

89 Acts, ch 244, §22 HF 477

Section amended

### **321G.11 Mufflers required.**

An all-terrain vehicle or snowmobile shall not be operated without suitable and effective muffling devices which limit engine noise to not more than eighty-six decibels as measured on the "A" scale at a distance of fifty feet; and a snowmobile, manufactured after July 1, 1973, which is sold, offered for sale, or used in this state, except in an authorized special event, shall have a muffler system that limits engine noise to not more than eighty-two decibels as measured on the "A" scale at a distance of fifty feet.

The commission may adopt rules with respect to the inspection of all-terrain vehicles and snowmobiles and testing of their mufflers.

A separate placard shall be affixed, permanently and conspicuously, to any new snowmobile sold or offered for sale in this state that does not meet the muffler requirements as stated above. The placard shall designate each snowmobile which does not meet the muffler requirements.

A snowmobile manufactured after July 1, 1975, which is sold, offered for sale or used in this state, except in an authorized special event, shall have a muffler system that limits engine noise to not more than seventy-eight decibels as measured on the "A" scale at a distance of fifty feet.

89 Acts, ch 244, §23 HF 477  
Unnumbered paragraphs 1 and 2 amended

### **321G.12 Head lamp—tail lamp—brakes.**

Every all-terrain vehicle operated during the hours of darkness shall display a lighted head lamp and tail lamp. Every snowmobile shall be equipped with at least one head lamp and one tail lamp. Every all-terrain vehicle and snowmobile shall be equipped with brakes which conform to standards prescribed by the director of transportation.

89 Acts, ch 244, §24 HF 477  
Section stricken and rewritten

### **321G.13 Unlawful operation.**

A person shall not drive or operate an all-terrain vehicle or snowmobile:

1. At a rate of speed greater than reasonable or proper under all existing circumstances.
2. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto.
3. While under the influence of intoxicating liquor or narcotics or habit-forming drugs.
4. Without a lighted headlight and taillight from sunset to sunrise and at such other times when conditions provide insufficient lighting to render clearly discernible persons and vehicles at a distance of five hundred feet ahead.
5. In any tree nursery or planting in a manner which damages or destroys growing stock.
6. On any public land, ice, or snow, in violation of official signs of the commission prohibiting such operation in the interest of safety for persons, property, or the environment. Any officer appointed by the commission may post an official sign in an emergency for the protection of persons, property, or the environment.
7. In or on any park or fish and game areas except on designated all-terrain vehicle or snowmobile trails.
8. Upon an operating railroad right of way. An all-terrain vehicle or snowmobile may be driven directly across a railroad right of way only at an established crossing and, notwithstanding any other provisions of law, may, if necessary, use the improved portion of the established crossing after yielding to all oncoming traffic. This subsection does not apply to a law enforcement officer or railroad employee in the lawful discharge of the officer's or employee's duties.
9. On any public road or street without a bright colored pennant or flag displayed at least sixty inches above the ground. Said pennant or flag shall be a minimum of six inches by nine inches, shall be orange and shall provide a fluorescent effect.
10. On public land without a measurable snow cover except as provided in section 321.234A or in specific areas permitted by the commission, such as "all-terrain vehicle parks" which are designated and intended for use with or without snow.
11. A person shall not operate or ride in an all-terrain vehicle or snowmobile with a firearm in the person's possession unless it is unloaded and enclosed in a carrying case, or any bow unless it is unstrung or enclosed in a carrying case.

12. A person shall not operate an all-terrain vehicle while carrying a passenger.

89 Acts, ch 244, §25, 26 HF 477  
Unnumbered paragraph 1 and subsections 7, 8, 10, and 11 amended  
NEW subsection 12

### **321G.15 Operation pending registration.**

The commission shall furnish snowmobile and all-terrain vehicle dealers with pasteboard cards bearing the words "registration applied for" and space for the date of purchase. An unregistered all-terrain vehicle or snowmobile sold by a dealer shall bear one of these cards which entitles the purchaser to operate it for ten days immediately following the purchase. The purchaser of a registered all-terrain vehicle or snowmobile may operate it for ten days immediately following the purchase, without having completed a transfer of registration. A person who purchases an all-terrain vehicle or snowmobile from a dealer shall, within five days of the purchase, apply for an all-terrain vehicle or snowmobile registration or transfer of registration.

89 Acts, ch 244, §27 HF 477  
Section amended

### **321G.16 Special events.**

The commission may authorize the holding of organized special events as defined in this chapter within this state. The commission shall adopt and may amend rules relating to the conduct of special events held under commission permits and designating the equipment and facilities necessary for safe operation of all-terrain vehicles and snowmobiles or for the safety of operators, participants, and observers in the special events. At least thirty days before the scheduled date of a special event in this state, an application shall be filed with the commission for authorization to conduct the special event. The application shall set forth the date, time, and location of the proposed special event and any other information the commission requires. The special event shall not be conducted without written authorization of the commission. Copies of the rules shall be furnished by the commission to any person making an application.

89 Acts, ch 244, §28 HF 477  
Section amended

### **321G.17 Violation of "stop" signal.**

A person, after having received a visual or audible signal from a peace officer to come to a stop, shall not operate an all-terrain vehicle or snowmobile in willful or wanton disregard of the signal or interfere with or endanger the officer or any other person or vehicle, or increase speed or attempt to flee or elude the officer.

89 Acts, ch 244, §29 HF 477  
Section amended

### **321G.18 Negligence.**

The owner and operator of an all-terrain vehicle or snowmobile is liable for any injury or damage occasioned by the negligent operation of the all-terrain vehicle or snowmobile.

89 Acts, ch 244, §30 HF 477  
Section amended

### **321G.19 Rented snowmobiles and all-terrain vehicles.**

1. The owner of a rented all-terrain vehicle or snowmobile shall keep a record of the name and address of each person renting the all-terrain vehicle or snowmobile, its identification number, the departure date and time, and the expected time of return. The records shall be preserved for six months.

2. The owner of an all-terrain vehicle or snowmobile operated for hire shall not permit the use or operation of a rented all-terrain vehicle or snowmobile unless it has been provided with all equipment required by this chapter or rules of the

commission or the director of transportation, properly installed and in good working order.

89 Acts, ch 244, §31 HF 477  
Section amended

### **321G.20 Minors under twelve.**

No owner or operator of any snowmobile shall permit any person under twelve years of age to operate nor shall any person less than twelve years of age operate, the snowmobile except when accompanied on the same snowmobile by a responsible person of at least eighteen years of age who is experienced in snowmobile operation and who possesses a valid operator's or chauffeur's license, instruction permit, restricted license, or temporary permit issued under chapter 321 or a safety certificate issued under this chapter.

A person under twelve years of age shall not operate an all-terrain vehicle on public lands unless the person is taking a prescribed safety training course under the direct supervision of a certified all-terrain vehicle safety instructor and a parent or guardian.

89 Acts, ch 244, §32 HF 477  
NEW unnumbered paragraph 2

### **321G.21 Manufacturer, distributor or dealer—special registration.**

1. A manufacturer, distributor, or dealer owning any all-terrain vehicle or snowmobile required to be registered under this chapter may operate the all-terrain vehicle or snowmobile for purposes of transporting, testing, demonstrating, or selling it without the all-terrain vehicle or snowmobile being registered, except that a special identification number issued to the owner as provided in this chapter shall be displayed on the all-terrain vehicle or snowmobile. The special identification number shall not be used on an all-terrain vehicle or snowmobile offered for hire or for any work or service performed by a manufacturer, distributor, or dealer.

2. Any manufacturer, distributor or dealer may, upon payment of a fee of fifteen dollars, make application to the commission, upon forms prescribed by the commission, for a special registration certificate containing a general identification number and for one or more duplicate special registration certificates. The applicant shall submit reasonable proof of the applicant's status as a bona fide manufacturer, distributor or dealer as may be required by the commission.

3. The commission, upon granting an application, shall issue to the applicant a special registration certificate containing the applicant's name and address, the general identification number assigned to the applicant, the word "manufacturer", "dealer", or "distributor", and other information the commission prescribes. The manufacturer, distributor, or dealer shall have the assigned number printed upon or attached to a removable sign or signs which may be temporarily but firmly mounted or attached to the all-terrain vehicle or snowmobile being used. The display shall meet the requirements of this chapter and the rules of the commission.

4. The commission shall also issue duplicate special registration certificates which shall have displayed thereon the general identification number assigned to the applicant. Each duplicate registration certificate so issued shall contain a number or symbol identifying it from every other duplicate special registration certificate bearing the same general identification number. The fee for each additional duplicate special registration certificate shall be two dollars.

5. Each special registration certificate issued hereunder shall expire on December 31 of each year, and a new special registration certificate for the ensuing twelve months may be obtained upon application to the commission and payment of the fee provided by law.

6. Every manufacturer, distributor, or dealer shall keep a written record of the all-terrain vehicles and snowmobiles upon which special registration certificates are used, which record shall be open to inspection by any law enforcement officer or any officer or employee of the commission.

7. If a manufacturer, distributor, or dealer has an established place of business in more than one location, the manufacturer, distributor, or dealer shall secure a separate and distinct special registration certificate and general identification number for each place of business.

8. Dealers using special certificates under this chapter shall, before January 10 of each year, furnish the commission with a list of all used all-terrain vehicles and snowmobiles held by them for sale or trade, and upon which the registration fee for the current year has not been paid, giving the previous registration number, name of previous owner at the time the all-terrain vehicle or snowmobile was transferred to the dealer, and other information the commission requires.

9. If the purchaser or transferee of an all-terrain vehicle or snowmobile is a dealer who holds the same for resale and operates the all-terrain vehicle or snowmobile only for purposes incidental to a resale and displays the special dealer's certificate, or does not operate the all-terrain vehicle or snowmobile or permit it to be operated, the transferee is not required to obtain a new registration certificate but upon transferring title or interest to another person shall sign the reverse side of the registration certificate of the all-terrain vehicle or snowmobile indicating the name and address of the new purchaser. The purchaser may take the registration certificate to the county recorder and file a new application form with a fee of one dollar for transfer and the writing fee. The recorder shall award a transfer of the registration number. If the registration has expired while in the dealer's possession, the purchaser may renew the registration for the same fee and writing fee as if the purchaser is securing the original registration.

10. When a dealer purchases or otherwise acquires an all-terrain vehicle or snowmobile registered in this state, the dealer shall issue a signed receipt to the previous owner, indicating the date of purchase or acquisition, the name and address of the previous owner, and the registration number of the all-terrain vehicle or snowmobile purchased or acquired. The original receipt shall be delivered to the previous owner and one copy shall be mailed or delivered by the dealer to the county recorder of the county in which the all-terrain vehicle or snowmobile is registered, and one copy shall be delivered to the commission within forty-eight hours.

11. Nothing in this section shall prohibit a dealer from obtaining a new registration and transfer of registration in the same manner as other purchasers.

89 Acts, ch 244, §33 HF 477  
Subsections 1, 3, 6, and 8-10 amended

### **321G.22 Limitation of liability by public bodies and adjoining owners.**

The state, its political subdivisions, and the owners or tenants of property adjoining public lands or the right of way of a public highway and their agents and employees owe no duty of care to keep the public lands, ditches, or land contiguous to a highway or roadway under the control of the state or a political subdivision safe for entry or use by persons operating an all-terrain vehicle or snowmobile, or to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for such purposes, except in the case of willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity. The state, its political subdivisions, and the owners or tenants of property adjoining public lands or the right of way of a public highway, and their agents and employees are not liable for actions taken to allow or facilitate the use of public lands, ditches, or land contiguous to a highway or roadway except in the case of a willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

This section does not create a duty of care or ground of liability on behalf of the state, its political subdivisions, or the owners or tenants of property adjoining public lands or the right of way of a public highway and their agents and employees for injury to persons or property in the operation of all-terrain vehicles or snowmobiles in a ditch or on land contiguous to a highway or roadway under the control of the state or a political subdivision. The state, its political subdivisions, and the owners or tenants of property adjoining public lands or the right of way of a public highway and their agents and employees are not liable for the operation of an all-terrain vehicle or snowmobile in violation of this chapter.

89 Acts, ch 244, §34 HF 477  
Section amended

### **321G.23 Course of instruction.**

1. The commission shall provide, by rules adopted pursuant to section 321G.2, for the establishment of certified courses of instruction to be conducted throughout the state for the safe use and operation of all-terrain vehicles and snowmobiles. The curriculum shall include instruction in the lawful and safe use, operation, and equipping of all-terrain vehicles and snowmobiles consistent with this chapter and rules adopted by the commission and the director of transportation and other matters the commission deems pertinent for a qualified all-terrain vehicle or snowmobile operator.

2. The commission may certify any experienced, qualified operator to be an instructor of a class established under subsection 1. Each instructor shall be at least eighteen years of age.

3. Upon completion of the course of instruction, the commission shall provide for the administration of a written test to any student who wishes to qualify for a safety certificate.

4. The commission shall provide safety material relating to the operation of all-terrain vehicles and snowmobiles for the use of nonpublic or public elementary and secondary schools in this state.

89 Acts, ch 244, §35 HF 477  
Subsections 1 and 4 amended

### **321G.24 Safety certificate—fee.**

1. A person under eighteen years of age shall not operate an all-terrain vehicle or snowmobile in this state without obtaining a valid safety certificate issued by the commission and having the certificate in the person's possession, or unless the person is accompanied on the same snowmobile by a responsible person of at least eighteen years of age who is experienced in snowmobile operation and possesses a valid operator's or chauffeur's license, instruction permit, restricted license or temporary permit issued under chapter 321 or a safety certificate issued under this chapter.

2. Upon application and payment of a fee of three dollars, a qualified applicant shall be issued a safety certificate which is valid until the certificate is suspended or revoked for a violation of a provision of this chapter or a rule of the commission or the director of transportation. The application shall be made on forms issued by the commission and shall contain information as the commission may reasonably require.

3. Any person who is required to have a safety certificate under this chapter and who has completed a course of instruction established under section 321G.2, subsection 5, including the successful passage of an examination which includes a written test relating to such course of instruction, shall be considered qualified to apply for a safety certificate. The commission may waive the requirement of completing such course of instruction if such person successfully passes a written test based on such course of instruction.

4. The permit fees collected under this section shall be credited to the state conservation fund and shall be used for safety and educational programs.

5. A valid all-terrain vehicle or snowmobile safety certificate or license issued to a nonresident by a governmental authority of another state shall be considered a valid certificate or license in this state if the permit or license requirements of the governmental authority, excluding fees, are substantially the same as the requirements of this chapter as determined by the commission.

89 Acts, ch 244, §36 HF 477  
Subsections 1 and 5 amended

### **321G.25 Stopping and inspecting—warnings.**

A peace officer may stop and inspect an all-terrain vehicle or snowmobile operated, parked, or stored on public streets, highways, public lands, or frozen waters of the state to determine if the all-terrain vehicle or snowmobile is registered, numbered, or equipped as required by this chapter and commission rules. The officer shall not inspect an area that is not essential to determine compliance with the requirements. If the officer determines that the all-terrain vehicle or snowmobile is not in compliance, the officer may issue a warning memorandum to the operator and forward a copy to the commission. The warning memorandum shall indicate the items found not in compliance and shall direct the owner or operator of the all-terrain vehicle or snowmobile to have the all-terrain vehicle or snowmobile in compliance and return a copy of the warning memorandum with the proof of compliance to the commission within fourteen days. If the proof of compliance is not provided within fourteen days, the owner or operator is in violation of this chapter.

89 Acts, ch 244, §37 HF 477  
Section amended

### **321G.26 Termination of use.**

A person who receives a warning memorandum for an all-terrain vehicle or snowmobile shall stop using the all-terrain vehicle or snowmobile as soon as possible and shall not operate it on public streets, highways, public lands, or frozen waters of the state until the all-terrain vehicle or snowmobile is in compliance.

89 Acts, ch 244, §38 HF 477  
Section amended

### **321G.27 Writing fees.**

The county recorder shall collect a writing fee of one dollar for an all-terrain vehicle or snowmobile registration.

89 Acts, ch 244, §39 HF 477  
Section amended

### **321G.28 Consistent local laws—special local rules.**

1. This chapter and other applicable laws of this state shall govern the operation, equipment, numbering, and all other matters relating to an all-terrain vehicle or snowmobile when the all-terrain vehicle or snowmobile is operated or maintained in this state. However, this chapter does not prevent the adoption of an ordinance or local law relating to the operation of or equipment of all-terrain vehicles or snowmobiles. The ordinances or local laws are operative only so long as they are not inconsistent with this chapter or the rules adopted by the commission.

2. A subdivision of this state, after public notice by publication in a newspaper having a general circulation in the subdivision, may make formal application to the commission for special rules concerning the operation of all-terrain vehicles or snowmobiles within the territorial limits of the subdivision and shall provide the commission with the reasons the special rules are necessary.

3. The commission, upon application by local authorities and in conformity with this chapter, may make special rules concerning the operation of all-terrain vehicles or snowmobiles within the territorial limits of a subdivision of this state.

89 Acts, ch 244, §40 HF 477  
Section amended

## CHAPTER 321J

### OPERATING WHILE INTOXICATED

#### 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 thirty 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. If the revocation is sustained, the administrative law judge who conducted the hearing may 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 has ten days to file a request for review of the decision by the director. The director or the director's designee shall review the decision within 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 or is being 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 prevail at the hearing to rescind the revocation, 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 and the department shall rescind the revocation.

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.

89 Acts, ch 83, §46 SF 112  
Subsection 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. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not 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.

89 Acts, ch 317, §37 SF 531  
Section amended

## CHAPTER 321L

### HANDICAPPED PARKING

Chapter takes effect January 1, 1990; 89 Acts, ch 247, §21 HF 745

#### 321L.1 Definitions.

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

1. "Department" means the state department of transportation.
2. "Director" means the director of transportation.
3. "Handicapped identification device" or "device" means an identification device bearing the international symbol of accessibility issued by the department, and includes a handicapped registration plate issued to a handicapped person under section 321.34, subsection 7, a handicapped identification sticker affixed to a registration plate issued to a disabled veteran under section 321.166, subsection 6, and a handicapped identification hanging device which is a placard for hanging from the rearview mirror when the motor vehicle is parked.
4. "Handicapped parking sign" means a sign which bears the international symbol of accessibility that meets the requirements under section 321L.6.
5. "Handicapped parking space" means a parking space designated for use by only motor vehicles displaying a handicapped identification device that meets the requirements of sections 321L.5 and 321L.6.
6. "Handicapped person" means a person who, because of a disability or impairment, meets either of the following:

- a. Is unable to reasonably walk in excess of two hundred feet unassisted.
- b. Cannot walk without causing serious detriment or injury to the person's health.

89 Acts, ch 247, §9 HF 745  
NEW section

### 321L.2 Handicapped identification devices—application and issuance.

1. A handicapped resident of the state desiring a handicapped identification device shall apply to the department upon an application form furnished by the department providing the applicant's name, address, date of birth, and social security number and shall also provide a statement from a physician licensed under chapter 148, 149, 150, or 150A, or a chiropractor licensed under chapter 151, written on the physician's or chiropractor's stationery, stating the nature of the applicant's handicap and such additional information as required by rules adopted by the department under section 321L.8. Handicapped registration plates must be ordered pursuant to section 321.34, subsection 7. A handicapped person may apply for either one temporary or one permanent handicapped identification hanging device. Persons who seek a permanent handicapped identification device shall be required to furnish evidence upon initial application that they are permanently handicapped. A person who has provided satisfactory evidence to the department that the person is permanently handicapped shall not be required to furnish evidence of being handicapped at a later date, unless the department deems it necessary. Persons who seek only temporary handicapped identification stickers or hanging devices shall be required to furnish evidence upon initial application that they are temporarily handicapped and, in addition, furnish evidence at three-month intervals that they remain temporarily handicapped. Temporary handicapped identification stickers and hanging devices shall be of a distinctively different color from permanent handicapped identification stickers and hanging devices. A new handicapped identification device can be issued if the previously issued device is reported lost, stolen, or damaged. The device reported as being lost or stolen shall be invalidated by the department. A device which is damaged shall be returned to the department and exchanged for a new device in accordance with rules adopted by the department.

2. Any person providing false information with the intent to defraud on the application for a handicapped identification device or on the physician's or chiropractor's statement used in establishing proof under subsection 1 is subject to a civil penalty of one hundred dollars which may be imposed by the department, or subject to invalidation by the department of the device issued to the individual, or subject to both the civil penalty and invalidation.

3. Each handicapped identification device shall be acquired by the department and sold at a 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 handicapped person the department shall permanently affix to the device a unique number which may be used by the department to identify the individual to whom the device is issued. A temporary handicapped identification hanging device shall have the expiration date permanently affixed to the device. Expiration dates and identification numbers affixed to handicapped identification hanging devices shall be of sufficient size to be readable from outside the vehicle.

A handicapped person who has been issued registration plates as a seriously disabled veteran under section 321.105 may apply to the department for a handicapped identification sticker 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 a cost not to exceed five dollars, to eligible handicapped persons upon application on forms prescribed by the department.

89 Acts, ch 247, §10 HF 745  
NEW section

### **321L.3 Handicapped identification devices—return of hanging devices.**

Handicapped identification hanging devices shall be returned to the department upon the occurrence of any of the following:

1. The person to whom the device has been issued is deceased.
2. The person to whom the device has been issued has moved out of state.
3. A person has found or has in the person's possession a hanging device that was not issued to that person.
4. The temporary device has expired.
5. The device has been invalidated.
6. The device reported lost or stolen under section 321L.2, subsection 1, is later found or retrieved after a subsequent device has been issued.

A person who fails to return the handicapped identification hanging device as stipulated above and subsequently misuses the device by illegally parking in a handicapped parking space is guilty of a misdemeanor and a fine of one hundred dollars shall be imposed on the person.

Devices may be returned to the department as required by this section either directly to the department or through a driver license station or any law enforcement office.

89 Acts, ch 247, §11 HF 745  
NEW section

### **321L.4 Handicapped parking—display and use of device.**

1. A handicapped identification device shall be displayed in a motor vehicle as a hanging device or on a motor vehicle as a plate or sticker as provided in section 321L.2 when being used by a handicapped person, either as an operator or passenger. Each hanging device 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.

2. The use of a handicapped parking space, located on either public or private property as provided in sections 321L.5 and 321L.6, by a motor vehicle not displaying a handicapped identification device; by a motor vehicle displaying such a device but not being used by a handicapped person, as an operator or passenger; or by a motor vehicle in violation of the rules adopted by the department under section 321L.8, constitutes improper use of a handicapped identification device which is a misdemeanor for which a fine shall be imposed upon the owner, operator, or lessee of the motor vehicle or the purchaser of the handicapped identification device. The fine for each violation shall be twenty-five dollars. Proof of conviction of two or more violations involving improper use of a handicapped identification device is grounds for revocation by the court or the department of the holder's privilege to possess or use the device.

89 Acts, ch 247, §12 HF 745  
NEW section

### **321L.5 Handicapped parking spaces—location and requirements.**

1. Handicapped parking spaces and access loading zones for handicapped persons that serve a particular building shall be located on the shortest accessible route to the nearest accessible entrance to the building.

2. A handicapped parking space designated after July 1, 1981, shall be at least one hundred forty-four inches wide, or, if two or more spaces are adjacent to each other, each space shall be at least one hundred twenty inches wide with at least a forty-eight inch walkway between each space. However, these dimension requirements do not apply to metered on-street parking spaces.

3. The state and any political subdivision of the state which provides off-street parking facilities shall provide handicapped parking spaces as stipulated in the table below. In addition, any nonresidential entity providing parking to the general public shall provide handicapped parking spaces as stipulated below:

TOTAL PARKING SPACES IN LOT	REQUIRED MINIMUM NUMBER OF HANDICAPPED PARKING SPACES
10 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	*
1001 and over	**

\* 2 PERCENT OF TOTAL  
\*\* 20 SPACES PLUS 1 FOR EACH 100 OVER 1000

Any other person may also set aside handicapped parking spaces on the person's property provided each handicapped parking space is clearly and prominently designated as a handicapped parking space.

4. Cities which provide on-street parking areas within a business district shall provide at least two handicapped parking spaces per lineal block within the business district.

5. A handicapped parking space located on a paved surface may be painted with a blue background upon which the international symbol of accessibility is painted in yellow nonskid paint. As used in this subsection, "paved surface" includes surfaces which are asphalt surfaced.

89 Acts, ch 247, §13 HF 745  
NEW section

**321L.6 Handicapped parking sign.**

A handicapped parking sign shall be displayed designating the handicapped parking space.

1. The handicapped parking sign shall have a blue background and bear the international symbol of accessibility in white. If an entity who owns or leases real property in a city is required to provide handicapped parking spaces, the city shall provide, upon request, the signs for the entity at cost. If an entity who owns or leases real property outside the corporate limits of a city is required to provide handicapped parking spaces, the county in which the property is located shall provide the signs for the entity at cost upon request.

2. The handicapped parking sign shall be affixed vertically on another object so that it is readily visible to a driver of a motor vehicle approaching the handicapped parking space. A handicapped parking space designated only by the

international symbol of accessibility being painted or otherwise placed horizontally on the parking space does not meet the requirements of this subsection.

3. The handicapped parking sign may include a sign stating the fine for improperly using the handicapped parking space provided under section 321L.4, subsection 2.

89 Acts, ch 247, §14 HF 745  
NEW section

### **321L.7 Penalty for failing to provide handicapped parking spaces and signs.**

Failure to provide proper handicapped parking spaces as provided in section 321L.5 or to properly display handicapped parking signs as provided in section 321L.6 is a misdemeanor for which a fine of one hundred dollars shall be imposed for each violation.

89 Acts, ch 247, §15 HF 745  
NEW section

### **321L.8 Handicapped identification devices and parking—rules.**

1. The department, pursuant to chapter 17A, shall adopt rules:
  - a. Establishing procedures for applying to the department for issuance of permanent or temporary handicapped identification devices under this chapter.
  - b. Governing the manner in which handicapped identification devices are to be displayed in or on motor vehicles.
  - c. Regarding enforcement of this chapter.
2. The department of public safety shall adopt rules pursuant to chapter 17A governing the manner in which handicapped parking spaces are provided.

89 Acts, ch 247, §16 HF 745  
NEW section

### **321L.9 Reciprocity.**

Handicapped identification devices issued lawfully by other states and foreign governmental bodies or their political subdivisions shall be valid handicapped identification devices for nonresidents traveling or visiting in this state.

89 Acts, ch 247, §17 HF 745  
NEW section

### **321L.10 Reissuance of hanging devices.**

1. The department shall begin the issuance of new handicapped identification hanging devices as provided in this chapter beginning January 1, 1990.
2. After January 1, 1991, only new handicapped identification hanging devices issued by the department pursuant to this chapter shall be valid and other hanging devices issued prior to January 1, 1990, shall be invalid.
3. In addition to the requirements of the permanent and temporary hanging devices provided under sections 321L.2 and 321L.4, one side of the hanging device shall also have the following statement printed on it: "Unauthorized use of this device as indicated in Iowa Code chapter 321L may result in a fine, invalidation of the device, or revocation of the right to use the device." The hanging device shall also include the return address and telephone number of the department.
4. This section does not apply to the issuance of handicapped registration plates or handicapped identification stickers.

89 Acts, ch 247, §18 HF 745  
NEW section

## CHAPTER 322

### MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND DEALERS

#### 322.9 Revocation or suspension of license.

The department may revoke or suspend the license of a retail motor vehicle dealer if, after notice and hearing by the department of inspections and appeals, it finds that the licensee has been guilty of an act which would be a ground for the denial of a license under section 322.6.

The department may revoke or suspend the license of a retail motor vehicle dealer if, after notice and hearing by the department of inspections and appeals, it finds that the licensee has been convicted or has forfeited bail on three charges of:

1. Failing upon the sale or transfer of a vehicle to deliver to the purchaser or transferee of the vehicle sold or transferred, a manufacturer's or importer's certificate, or a certificate of title duly assigned, as provided in chapter 321.
2. Failing upon the purchasing or otherwise acquiring of a vehicle to obtain a manufacturer's or importer's certificate, or a certificate of title duly assigned as provided in chapter 321.
3. Failing upon the purchasing or otherwise acquiring of a vehicle to obtain a new certificate of title to such vehicle when and where required in chapter 321.

89 Acts, ch 273, §3 HF 163  
Unnumbered paragraphs 1 and 2 amended

#### 322.24 Hearing—subpoenas.

The state department of transportation and the department of inspections and appeals may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence in any matter over which the respective department has jurisdiction, control, or supervision pertaining to this chapter.

If a person refuses to obey a subpoena, to give testimony, or to produce evidence as required, a judge of the district court of the state of Iowa in and for Polk county may, upon application and proof of the refusal, make an order awarding process of subpoena, or subpoena duces tecum, out of the court, for the witness to appear before the respective department, to give testimony, and to produce evidence as required. Upon filing the order in the office of the clerk of the district court, the clerk shall issue process of subpoena as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated.

89 Acts, ch 273, §4 HF 163  
Section amended

## CHAPTER 322A

### MOTOR VEHICLE FRANCHISERS

#### 322A.6 Application filed with the department.

If a franchiser seeks to terminate or not continue a franchise, or seeks to enter into a franchise establishing an additional motor vehicle dealership of the same line-make, the franchiser shall file an application with the department for permission to terminate or not continue the franchise, or for permission to enter into a franchise for additional representation of the same line-make in that community.

An applicant seeking permission to enter into a franchise for additional representation of the same line-make in a community shall deposit with the

department at the time the application is filed, an amount of money to be determined by the department of inspections and appeals to pay the costs of the hearing.

89 Acts, ch 273, §5 HF 163  
Unnumbered paragraph 2 amended

### **322A.17 Review.**

A decision of the department of inspections and appeals is subject to review by the state department of transportation, whose decision is final agency action for the purpose of judicial review.

Judicial review of actions of the state department of transportation may be sought in the manner provided for in section 322.10.

89 Acts, ch 273, §6 HF 163  
Section amended

## **CHAPTER 322B**

### **MOBILE HOME DEALERS**

#### **322B.6 Revocation, suspension and denial of license.**

The department may revoke, suspend, or refuse the license of a mobile home dealer, mobile home manufacturer, mobile home distributor, manufacturer's representative, or distributor's representative, as applicable, 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.
- In accordance with chapters 10A and 17A, each person whose license or application is revoked, suspended, or refused shall be provided an opportunity for a hearing before the department of inspections and appeals.

89 Acts, ch 273, §7, 8 HF 163  
Unnumbered paragraph 1 amended  
NEW unnumbered paragraph 2 at end of section

## CHAPTER 322C

## TRAVEL TRAILER DEALERS, MANUFACTURERS AND DISTRIBUTORS

**322C.6 Denial, suspension or revocation of license.**

A license issued under section 322C.4 or 322C.9 may be denied, revoked, or suspended, after opportunity for a hearing before the department of inspections and appeals in accordance with chapters 10A and 17A, if it is determined that the licensee or applicant has done any of the following:

1. Violated a provision of this chapter.
2. Made a material misrepresentation to the department in connection with an application for a license, certificate of title or registration of a travel trailer or other vehicle.
3. Been convicted of a fraudulent practice in connection with selling or offering for sale vehicles or parts of vehicles subject to registration under chapter 321.
4. Failed to maintain an established principal place of business in the county.
5. Had a license issued under this chapter, chapter 321H or 322, suspended or revoked within the previous three years.
6. Been convicted of a violation of any provision of section 321.52, 321.78, 321.92, 321.97, 321.98, 321.99, 321.100 or 714.16.
7. Knowingly made misleading, deceptive, untrue or fraudulent representations in the business as a distributor of travel trailers or engaged in unethical conduct or practice harmful or detrimental to the public.

89 Acts, ch 273, §9 HF 163  
Unnumbered paragraph 1 amended

## CHAPTER 323A

## PURCHASING FUEL FROM ALTERNATE SOURCES

**323A.2 Purchase from other source.**

1. The orderly flow of an adequate supply of motor fuel is declared to be essential to the economy and to the welfare of the people of this state. Therefore, in the public interest and notwithstanding the terms, provisions, or conditions of any franchise, a franchisee unable to obtain motor fuel from the franchisor may purchase the fuel from another available source, subject to subsections 2 to 5 and provided the franchisee has done all of the following:

a. At least forty-eight hours prior to entering into an agreement to purchase motor fuel from another source, the franchisee has requested delivery of motor fuel from the franchisor and the requested motor fuel has not been delivered and the franchisor has given the franchisee notice that the franchisor is unable to provide the requested motor fuel, or prior to entering into an agreement the franchisor has stated to the franchisee that the requested motor fuel will not be delivered. The request to the franchisor for delivery shall be for a type of fuel normally provided by the franchisor to the franchisee and for a quantity of fuel not exceeding the average amount sold by the franchisee in one week, based upon average weekly sales in the three months preceding the request, except that this provision shall not restrict a franchisee from purchasing gasohol from a source other than the franchisor or limit the quantity to be purchased when the franchisor does not normally supply the franchisee with gasohol.

b. The franchisee has requested and has been denied delivery of motor fuel sold or distributed under the trademark named in the franchise from a person other than franchisor.

c. The director of the department of natural resources determines that the franchisee has demonstrated that a special hardship exists in the community

served by the franchisee relating to the public health, safety and welfare, as specified under the rules of the department of natural resources.

2. The quantity of motor fuel requested or purchased from another source including the source listed in subsection 1, paragraph "b", shall not exceed the quantity requested from the franchisor.

3. At the time a franchisee enters into an agreement to purchase motor fuel from a source other than the franchisor, the franchisee shall inform the franchisor by the quickest available means.

4. If the franchisee sells motor fuel supplied from a source other than the franchisor, the franchisee shall prominently post a sign disclosing this fact to the public on each motor fuel pump used for dispensing the motor fuel. The size of the sign shall not be less than eight inches by ten inches and the letters on the sign shall be at least three inches in height.

5. A franchisee who sells motor fuel supplied from a source other than the franchisor shall also fully indemnify the franchisor against any claims asserted by a user on which the claimant prevails and in which the court determines that motor fuel not acquired from the franchisor was the proximate cause of the injury.

Purchases of motor fuel in accordance with this section are not good cause for termination of a franchise.

89 Acts, ch 83, §47 SF 112  
Subsection 1, paragraph c, and subsection 2 amended

## CHAPTER 324

### MOTOR FUEL TAX LAW

#### 324.4 Distributor's license.

It shall be unlawful for any person to receive motor fuel within this state or to otherwise act as a distributor unless the person holds an uncanceled distributor's license issued by the department. To procure a license a distributor shall file with the department an application signed under penalty for false certificate and in such form as the department may prescribe, setting forth:

1. The name under which the distributor will transact business in the state of Iowa.

2. The location, with street number address, of the principal office or place of business of the distributor within this state.

3. The name and complete residence address of the owner or the names and addresses of the partners, if the distributor is a partnership, or the names and addresses of the principal officers, if the distributor is a corporation or association.

The department may deny the issuance of a license to an applicant who is substantially delinquent in the payment of a tax due, or the interest or penalty on the tax, administered by the department. If the applicant is a partnership, a license may be denied if a partner owes any delinquent tax, interest, or penalty. If the applicant is a corporation, a license may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, interest, or penalty of the applicant corporation.

If (a) any application for a license to transact business as a distributor in this state shall be filed by any person whose license shall have been canceled for cause at any time theretofore under the provisions of the chapter or any prior motor fuel tax law, or (b) the department shall be of the opinion that such application is not filed in good faith, or (c) the application is filed by some person as a subterfuge for the real person in interest whose license or registration shall theretofore have been canceled for cause under the provisions of this chapter or any prior motor fuel tax law, the department, after a hearing of which the applicant shall have been given fifteen days' notice in writing and in which said applicant shall have

the right to appear in person or by counsel and present testimony, shall have and is hereby given the right and authority to refuse to issue to the applicant a distributor's license.

Upon the filing of the application, a filing fee of ten dollars shall be paid to the department.

The application in proper form having been accepted for filing, the filing fee paid and the other conditions and requirements of this section and division IV having been complied with, the department shall issue to the applicant a license to transact business as a distributor in this state. The license shall remain in full force and effect until canceled as provided in this chapter.

The license shall not be assignable, and shall be valid only for the distributor in whose name issued, and shall be displayed conspicuously in the principal place of business of the distributor in this state.

The department shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all licensees.

89 Acts, ch 251, §4 SF 154  
Unnumbered paragraph 2 amended

### **324.17 Refund to nonlicensee—fuel used other than in watercraft, aircraft, or motor vehicles.**

A person other than a distributor, dealer or user licensed under this chapter who uses motor fuel or special fuel for the purpose of operating or propelling farm tractors, corn shellers, roller mills, truck-mounted feed grinders, stationary gas engines, for producing denatured alcohol within the state, for cleaning or dyeing or for any purpose other than in watercraft or aircraft or for propelling motor vehicles operated or intended to be operated upon the public highways, and who has paid the motor fuel or special fuel tax on the fuel either directly to the department or by having the tax added to the price of the fuel, and who has a refund permit, upon presentation to and approval by the department of a claim for refund, shall be reimbursed and repaid the amount of the tax which the claimant has paid on the gallonage so used, except that the amount of a refund payable under this division may be applied by the department against any tax liability outstanding on the books of the department against the claimant. Every claim is subject to the following conditions:

1. The claim shall be on a form prescribed by the department and be certified by the claimant under penalty for false certificate.

2. The claim shall have attached thereto the original invoice or other proof as prescribed by the department showing the purchase of the motor fuel or special fuel on which a refund is claimed.

3. An invoice shall not be acceptable in support of a claim for refund unless it is a separate serially numbered invoice covering no more than one purchase of motor fuel or special fuel, prepared by the seller on a form approved by the department which will prevent erasure or alteration; nor unless it is legibly written with no corrections or erasures and shows the date of sale, the name and address of the seller and of the purchaser, the kind of fuel, the gallonage in figures, the per gallon price of the motor fuel or special fuel, the total purchase price including the Iowa motor fuel or special fuel tax and that the total purchase price including tax has been paid; provided, that as to refund invoices made on a billing machine the department may waive any of the requirements of this subsection.

4. The claim shall state the gallonage of motor fuel or special fuel that was used or will be used by the claimant other than in watercraft or aircraft or to propel motor vehicles, the manner in which the motor fuel or special fuel was used or will be used and the equipment in which it was used or will be used.

5. The claim shall also state whether or not the claimant used fuel for watercraft or aircraft or to propel motor vehicles from the same tanks or

receptacles in which the claimant kept the motor fuel on which the refund is claimed.

6. A refund shall not be paid with respect to any motor fuel or special fuel taken out of this state in fuel supply tanks of watercraft, aircraft, or motor vehicles.

7. A refund shall not be paid with respect to motor fuel or special fuel purchased more than four calendar months prior to the date the claim was filed with the department.

8. A refund shall not be paid with respect to motor fuel or special fuel used in the performance of a contract which is paid out of state funds unless the contract for the work contains a certificate made under penalty for false certificate that the estimate, bid or price to be paid for the work includes no amount representing motor fuel or special fuel tax subject to refund.

9. If an original invoice is lost or destroyed the department may in its discretion accept a copy identified and certified by the seller as being a true copy of the original.

10. The right of a person to a refund under this section shall not be assignable. Claim shall be made by and the amount of the refund when determined by the department shall be paid to the person who purchased the motor fuel or special fuel as shown in the supporting invoice.

11. In order to verify the validity of a claim for refund the department shall have the right to require the claimant to furnish such additional proof of validity as the department may determine and to examine the books and records of the claimant. Failure of a claimant to furnish the claimant's books and records for examination shall constitute a waiver of all rights to refund related to the transaction in question.

12. Refunds shall be made of motor vehicle fuel taxes paid on motor fuel or special fuel placed in motor vehicles and used, other than on public highways, in the extraction and processing of natural deposits, without regard to whether such motor vehicles are registered under section 321.18. An applicant for a refund under this subsection must maintain adequate records for a period of three years beyond the filing of the claim. The department will pay the claim upon the presentation of proof which may reasonably be required.

13. A bona fide commercial fisher, licensed and operating under an owner's certificate for commercial fishing gear issued pursuant to section 109B.4 is entitled to receive a motor fuel or special fuel tax refund under this section.

14. In lieu of the refund provided in this section, a person may receive an income tax credit as provided in chapter 422, division IX, but only as to motor fuel or special fuel not used in motor vehicles, aircraft, or watercraft.

A claim for refund shall not be allowed which is in an amount of less than ten dollars.

89 Acts, ch 251, §5 SF 154  
Subsection 7 amended

### **324.36 Special fuel distributors', special fuel dealers' and special fuel users' licenses.**

1. *Required.* It is unlawful for a person to act as a special fuel dealer in this state unless the person holds a special fuel dealer's license issued to the person by the department, except as provided in this section. A person who holds a special fuel distributor's license may dispense special fuel into a motor vehicle or aircraft special fuel holding tank without obtaining a special fuel dealer's license. Except for special fuel which is delivered by a special fuel dealer into a fuel supply tank of a motor vehicle or aircraft or into a motor vehicle or aircraft special fuel holding tank in this state or delivered by a special fuel distributor into a motor vehicle or aircraft special fuel holding tank, the use of special fuel in this state by a person is unlawful unless the person holds a special fuel user's license issued to the

person by the department. It is unlawful for a person to sell special fuel in this state in bulk for highway or aircraft use without first obtaining a special fuel distributor's license. The license shall be issued under the same procedure and subject to the same requirements and limitations as provided in section 324.4.

2. *Application.* Application for a special fuel dealer's license or a special fuel user's license shall be made to the department. A special fuel dealer's license or a special fuel user's license, whichever is applicable, shall be required for each separate place of business or location where special fuels are regularly delivered or placed into the fuel supply tank of a motor vehicle or aircraft. However, if a special fuel dealer also operates one or more bulk plants from which the distribution of a special fuel is primarily by tank vehicle, the special fuel dealer need not obtain a separate license for any of these plants not provided with fixed equipment designed for fueling vehicles or aircraft. Upon written application and at the discretion of the director, a special fuel user whose business operations require mobile special fuel storage may obtain a single special fuel user's license to be issued to the user's permanent principal place of business. Upon written application and at the discretion of the director, a special fuel dealer may be issued a special license to dispense fuel from a tankwagon into the fuel supply tank of a motor vehicle. The special license shall be issued for the dealer's place of business and all of the provisions of this division apply to the dispensing of fuel from tankwagons. A special fuel dealer is not required to obtain a special license to dispense fuel from a tankwagon into the fuel supply tank of an aircraft.

3. *Form of application.* The application shall be filed upon a form prepared and furnished by the department and shall contain such information as the department deems necessary.

4. *Issuance.* Upon receipt of the application, the department shall issue to the applicant a license to act as a special fuel dealer or a special fuel user; provided, however, the department may refuse to issue a special fuel dealer's license or a special fuel user's license to any person: (a) who formerly held either type of license and which has been revoked for cause; or (b) who is a subterfuge for the real party in interest whose license has been revoked for cause; or (c) upon other sufficient cause being shown. Before refusal, the department shall grant the applicant a hearing and give the applicant at least fifteen days' written notice of the time and place thereof.

5. *Expiration of license.* Each special fuel dealer's license and special fuel user's license shall be valid until suspended or revoked for cause or otherwise canceled.

6. *Assignment forbidden.* A special fuel dealer's license or special fuel user's license shall not be transferable.

89 Acts, ch 251, §6 SF 154  
Subsection 2 amended

### **324.65 Failure to promptly pay fuel taxes—refunds—interest and penalties—successor liability.**

If a licensee or other person fails to remit at least ninety percent of the tax due with the filing of the return on or before the due date or pays less than ninety percent of any tax required to be shown on the return, there shall be added to the tax a penalty of seven and one-half percent of the amount of the tax due, except as provided in section 421.27. The penalty imposed under this section is not subject to waiver. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7 counting each fraction of a month as an entire month, computed from the date the return was required to be filed. If the amount of the tax as determined by the appropriate state agency is less than the amount paid, the excess shall be refunded with interest, the interest to begin to accrue on the first day of the third calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the latest, at the rate in

effect under section 421.7 counting each fraction of a month as an entire month under the rules prescribed by the appropriate state agency. In lieu of a refund allowed under this section, the licensee may request that the department allow the refund to be held as a credit for the licensee.

The appropriate state agency shall not remit any part of a penalty for delinquent payment if the delinquency results from the fact that a check given in payment is not honored because of insufficient funds in the account upon which the check was drawn. However, if it appears as a result of an investigation that there has been a deliberate attempt on the part of a licensee or other person to evade payment of fuel taxes there shall be added to the assessment against the offending person and collected a penalty of seventy-five percent of the tax due. A report required of licensees or persons operating under division III, upon which no tax is due, is subject to a penalty of ten dollars if the report is not timely filed with the state department of transportation.

If a licensee or other person sells the licensee's or other person's business or stock of goods or quits the business, the licensee or other person shall prepare a final return and pay all tax due within the time required by law. The immediate successor to the licensee or other person, if any, shall withhold sufficient of the purchase price, in money or money's worth, to pay the amount of any delinquent tax, interest or penalty due and unpaid. If the immediate successor of the business or stock of goods intentionally fails to withhold any amount due from the purchase price as provided in this paragraph, the immediate successor is personally liable for the payment of the taxes, interest and penalty accrued and unpaid on account of the operation of the business by the immediate former licensee or other person, 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.

89 Acts, ch 251, §7 SF 154  
Unnumbered paragraph 2 amended

### **324.67 Limitation on collection proceedings.**

An action or other proceeding shall not be maintained to enforce collection of any amount of fuel tax, penalty, or interest over and above the amount shown to be due by reports filed by a licensee except upon an assessment by the department of revenue and finance as authorized in this chapter. An assessment shall not be made covering a period beyond three years prior to the date of assessment except that the period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

89 Acts, ch 251, §8 SF 154  
Section 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 that the licensee failed to correctly report or pay the tax, the appropriate state agency may cancel the license and shall notify the licensee of the cancellation by mail to the licensee's last known address.

If a licensee abuses the privileges for which the license was issued, fails to produce records reasonably requested or fails to extend reasonable 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.

89 Acts, ch 251, §9 SF 154  
Unnumbered paragraph 1 amended

## CHAPTER 324A

### RAILWAY VEHICLE FUEL TAX

Repealed by 89 Acts, ch 6, §7 SF 113

## CHAPTER 325

### MOTOR VEHICLE CERTIFICATED CARRIERS

#### 325.11 Rules of procedure.

The department shall adopt rules for the procedure to be followed in the filing of applications and the department of inspections and appeals shall adopt rules for the conduct of hearings.

89 Acts, ch 273, §10 HF 163  
Section amended

#### 325.13 Protests against applications.

1. Upon the filing of the application, the department shall publish a notice to the citizens of each county in which the proposed service will be rendered. The notice shall be published once in a newspaper of general circulation in each county.

2. Any person, firm, corporation, city, or county whose rights or interests may be affected may file written objections with the department.

3. A protest against the granting of the application shall state specifically the grounds upon which it is made and contain a concise statement of the interest of the person filing a protest in the proceeding.

4. A protest shall be filed with the department not later than thirty days from the date of the publication of notice.

5. Upon receipt of a protest complying with subsection 3, the department shall request the department of inspections and appeals to set the matter for hearing not less than ten days following the expiration of the time in which protests may be made. The department of inspections and appeals shall give notice to all persons who have filed protests of the time and place of the hearing.

89 Acts, ch 273, §11 HF 163  
Subsection 5 amended

### **325.17 Uncontested case procedure.**

If no protest is filed, the department shall consider the application and any relevant evidence in determining the propriety of granting the application.

89 Acts, ch 273, §12 HF 163  
Section amended

### **325.19 Expense of hearing.**

The applicant shall pay all the costs of the hearing before the application is granted. The department of inspections and appeals shall establish appropriate fees which shall be paid to the department of inspections and appeals.

89 Acts, ch 273, §13 HF 163  
Section amended

### **325.21 Review.**

A decision of the department of inspections and appeals is subject to review by the state department of transportation. Judicial review of the decisions and actions of the department of transportation may be sought in accordance with chapter 17A. The petitioners must file with the clerk of the district court a bond for costs in the sum of not less than five hundred dollars.

89 Acts, ch 273, §14 HF 163  
Section amended

### **325.25 Transfer of certificate.**

A certificate of convenience and necessity shall not be sold, transferred, leased, or assigned, nor shall a contract or agreement with reference to or affecting a certificate be made without the written approval of the department. The department may request the department of inspections and appeals to hold a hearing. The department of transportation shall approve the sale, transfer, lease, or assignment upon a finding by the department of inspections and appeals that there has been continuous service under the certificate for at least ninety days prior to the transfer, that the transferee is fit, willing, and able to perform the operations authorized by the certificate, and that the transfer is consistent with the public interest. Pending determination of an application filed with the department for approval of a sale, transfer, lease, or assignment, the department may grant temporary approval of the proposed operation upon a finding of good cause.

A regular route passenger certificate shall not be sold, transferred, leased, or assigned without the approval of the department. The department shall approve the sale, transfer, lease or assignment if the person obtaining or seeking to obtain ownership or control of a certificate is found to be fit, willing and able to perform the service proposed. In determining the fitness of the person seeking transfer of the certificate, the department shall consider only the person's safety record and ability to comply with section 325.26.

89 Acts, ch 273, §15 HF 163  
Unnumbered paragraph 1 amended

## CHAPTER 326

### MOTOR VEHICLE REGISTRATION RECIPROCITY

#### **326.11 Subsequently acquired vehicles.**

Vehicles acquired by a fleet owner after the commencement of the registration year and subsequently added to the fleet shall be prorated by applying the mileage percentage used in the original application for such fleet for such registration period to registration fees due under chapter 321 but in no case less than that required by section 326.10. A supplemental report shall be filed with the department not later than ten days after such addition to the fleet.

The director may issue temporary written authorization to carriers for vehicles acquired by a fleet owner and added to the fleet owner's prorate fleet after the beginning of the registration year. The temporary authority shall permit the operation of a commercial vehicle until permanent identification is issued, except that the temporary authority shall expire after ninety days.

89 Acts, ch 317, §38 SF 531  
Unnumbered paragraph 2 amended

## CHAPTER 327

### MOTOR VEHICLE TRUCK OPERATORS

#### **327.16 Revocation of permit.**

For just cause, after due hearing conducted by the department of inspections and appeals, the state department of transportation may at any time alter, amend, or revoke a permit. If the holder of the permit or the holder's agent persists in a violation of a prescribed safety rule, the department may revoke the permit.

89 Acts, ch 273, §16 HF 163  
Section amended

## CHAPTER 327A

### LIQUID TRANSPORT CARRIERS

#### **327A.4 Disposal of certificate.**

If a person files an application with the department for authority to sell, transfer, lease, or assign a certificate of convenience and necessity issued under this chapter, the department shall request the department of inspections and appeals to fix a date for hearing. The state department of transportation shall cause a notice addressed to the citizens of each county through or in which the proposed service will be rendered to be published in a newspaper of general circulation in each such county, once each week for two consecutive weeks. The department shall notify each liquid transport carrier holding a certificate, issued by the department, to transport over, in, or through the area described in the application, by mailing notice of the hearing to each such carrier at least ten days before the date fixed for hearing. Chapter 325 and this chapter, as appropriate, are applicable to the hearing.

89 Acts, ch 273, §17 HF 163  
Section amended

#### **327A.14 Prior service—rights transferred or assigned.**

A liquid transport carrier actively and continuously engaged in business as such between the first day of December, 1956, and the fourteenth day of January, 1957, shall be issued a certificate of convenience and necessity covering all points

in this state to all other points in this state, and all routes and areas in this state, if the application is made within sixty days after May 17, 1957. Rights so granted shall not be sold, leased, transferred, or assigned to a person engaged directly or indirectly in the transportation for hire of liquid products in bulk or freight in interstate commerce or in intrastate commerce, in this or any other state, or the District of Columbia, or to any person engaged in the leasing of equipment for such purposes, except rights which are actively being exercised at the time of sale, lease, transfer, or assignment; however, rights so granted may be sold, leased, transferred, or assigned to a person who has not engaged directly or indirectly in the transportation for hire of liquid products in bulk or freight in interstate or intrastate commerce prior to the date of the transfer, or to a person who has not prior to that date engaged in the leasing of equipment for that purpose, and it is not necessary for the department to find that the sale, lease, transfer, or assignment is necessary in the public interest. Before any rights may be sold, leased, transferred, or assigned, application shall be filed with the department of transportation, which shall request the department of inspections and appeals to set a date for hearing on the application, and section 327A.4 is applicable. Rights actively being exercised may be sold, leased, transferred, or assigned to a person engaged in the transportation for hire of liquid products in bulk or freight under the conditions set forth in this section:

1. When an application for a sale, lease, transfer, assignment, consolidation, merger, or acquisition of control is filed with the department, if after a hearing by the department of inspections and appeals, the department of transportation finds that the proposed purchaser, lessee, transferee, or assignee is fit, willing and able, that the proposed seller, lessor, transferor, or assignor has not abandoned, suspended, or discontinued operations, that the transaction proposed will be consistent with the public interest, and that the conditions of this section have been or will be fulfilled, the department of transportation may enter an order approving and authorizing the sale, lease, transfer, assignment, consolidation, merger, or acquisition of control, upon terms and conditions it finds to be just and reasonable and with modifications as it may prescribe.

2. Except as otherwise provided in subsection 1, it is unlawful for a person to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more persons engaged in the transportation for hire of liquid products in bulk or freight or of one or more persons so engaged, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner.

3. The department may, upon complaint or upon its own initiative without complaint, investigate and determine whether a person is violating this section. If the department finds upon investigation that a person is violating this section, it shall, after a hearing conducted by the department of inspections and appeals, require the person to take action consistent with this chapter to prevent continued violation of this section.

<sup>89</sup> Acts, ch 273, §18 HF 163  
Section amended

## CHAPTER 327C

### SUPERVISION OF CARRIERS

#### 327C.8 Objections—hearing.

A person directly affected by the proposed discontinuance of an agency may file written objections with the department stating the grounds for the objections, within fifteen days from the time of the publication of the notice as provided in

section 327C.7. Upon the filing of objections the department shall request the department of inspections and appeals to hold a hearing, which shall be held within sixty days from the filing of the objections. Written notice of the time and place of the hearing shall be mailed by the department of inspections and appeals to the railroad corporation and the person filing objections at least ten days prior to the date fixed for the hearing.

89 Acts, ch 273, §19 HF 163  
Section amended

### **327C.12 Aid from courts.**

The department or the department of inspections and appeals may invoke the aid of any court of record in the state in requiring the attendance and testimony of witnesses and the production of books, papers, tariff schedules, agreements, and other documents. If a person refuses to obey a subpoena or other process, a court having jurisdiction of the inquiry shall issue an order requiring any of the officers, agents, or employees of a carrier or other person to appear before either department and produce all books and papers required by the order and testify in relation to any matter under investigation.

89 Acts, ch 273, §20 HF 163  
Section amended

### **327C.17 Penalty.**

If a railroad fails or refuses to comply with a rule or order made by the state department of transportation or the department of inspections and appeals within the time specified, the railroad is, for each day of such failure, subject to a schedule "two" penalty.

89 Acts, ch 273, §21 HF 163  
Section amended

### **327C.19 Review.**

A decision of the department of inspections and appeals is subject to review by the state department of transportation.

Judicial review of the actions of the state department of transportation may be sought in accordance with chapter 17A.

89 Acts, ch 273, §22 HF 163  
Section amended

### **327C.20 Remitting penalty.**

If a common carrier fails in a judicial review proceeding to secure a vacation of the order objected to, it may apply to the court in which the review proceeding is finally adjudicated for an order remitting the penalty which has accrued during the review proceeding. Upon a satisfactory showing that the petition for judicial review was filed in good faith and not for the purpose of delay, and that there were reasonable grounds to believe that the order was unreasonable or unjust or that the power of the department of transportation or the department of inspections and appeals to make the order was doubtful, the court may remit the penalty that has accrued during the review proceeding.

89 Acts, ch 273, §23 HF 163  
Section amended

### **327C.25 Complaints.**

A person may file with the department a petition setting forth any particular in which a common carrier has violated the law to which it is subject and the amount of damages sustained by reason of the violation. The department shall furnish a copy of the complaint to the carrier against which a complaint is filed. The department shall request the department of inspections and appeals to schedule a hearing in which the carrier shall answer the petition or satisfy the demands of the complaint. If the carrier fails to satisfy the complaint within the time fixed or

there appears to be reasonable grounds for investigating the matters set forth in the petition, the department of inspections and appeals shall hear and determine the questions involved and make orders it finds proper. If the department of transportation has reason to believe that a carrier is violating any of the laws to which it is subject, the department may institute an investigation and request the department of inspections and appeals to conduct a hearing in relation to the matters as if a petition had been filed.

89 Acts, ch 273, §24 HF 163  
Section amended

### **327C.26 Reports.**

When a hearing has been held before the department of inspections and appeals after notice, it shall make a report in writing setting forth the findings of fact and its conclusions together with its recommendations as to what reparation, if any, the offending carrier shall make to a party who has suffered damage. The findings of fact are prima facie evidence in all further legal proceedings of every fact found. All reports of hearings and investigations made by the department of inspections and appeals shall be entered of record and a copy furnished to the carrier against which the complaint was filed, to the party complaining, and to any other person having a direct interest in the matter. A reasonable fee not to exceed the actual duplication costs may be charged for the copies.

89 Acts, ch 273, §25 HF 163  
Section amended

### **327C.28 Violation of order—petition—notice.**

If a person violates or fails to obey a lawful order or requirement of the department of transportation or the department of inspections and appeals, the department of transportation or the department of inspections and appeals shall apply by petition in the name of the state against the person, to the district court, alleging the violation or failure to obey. The court shall hear and determine the matter set forth in the petition on reasonable notice to the person, to be fixed by the court and to be served in the same manner as an original notice for the commencement of action.

89 Acts, ch 273, §26 HF 163  
Section amended

### **327C.29 Interested party may begin proceedings.**

A person interested in enforcing an order or requirement of the department of transportation or the department of inspections and appeals, may file a petition against the violator, alleging the failure to comply with the order or requirement and asking for summary relief to the same extent and in the same manner as the department of transportation or the department of inspections and appeals may under section 327C.28, and the proceedings after the filing of the petition shall be the same as in section 327C.28.

89 Acts, ch 273, §27 HF 163  
Section amended

## **CHAPTER 327D**

### **REGULATION OF CARRIERS**

#### **327D.53 Division of joint rates.**

Before the adoption of the rates, the department shall notify the railroad corporations interested in the schedule of joint rates fixed, and give them a reasonable time to agree upon a division of the charges provided. If the corporations fail to agree upon a division, and to notify the department of their

agreement, the department shall, after a hearing conducted by the department of inspections and appeals, decide the rates, taking into consideration the value of terminal facilities and all the circumstances of the haul, and the division so determined by it is, in all controversies or actions between the railroad corporations interested, prima facie evidence of a just and reasonable division.

89 Acts, ch 273, §28 HF 163  
Section amended

### **327D.66 Rate schedules—filing and public access.**

Every common carrier, except railway corporations, subject to the provisions of this chapter shall file with the department and shall print schedules showing the rates for the transportation within this state of persons and property from each point upon its route to all other points on the route and from all points upon its route to all points upon every other route leased, operated, or controlled by it; and from each point on its route or upon any route leased, operated, or controlled by it to all points upon the route of any other common carrier, whenever a through route and a joint rate have been established or ordered between any two points. If no joint rate over a through route has been established, the schedules of the several carriers in the through route shall show the separately established rates, applicable to the through transportation.

The schedules shall be plainly printed and a copy of often used schedules shall be kept by every carrier readily accessible to and for inspection by the public in every station and office of the carrier where passengers or property are received for transportation when the station or office is in the charge of an agent. A notice printed in bold type and stating that the often used schedules are on file with the agent and open to public inspection, and that the agent will assist any person to determine from the schedule any rate shall be posted by the carrier in public and conspicuous places in each station or office. The department shall, by rule, provide that adequate public access to schedules not often used be provided in a different manner.

Railway corporations shall maintain a copy of schedules and rates on file in the office of the carrier readily accessible to and for inspection by the public.

89 Acts, ch 57, §1, 2 SF 169  
Unnumbered paragraph 1 amended  
NEW unnumbered paragraph 3

### **327D.72 Interstate commerce schedules.**

When schedules and classifications required by the interstate commerce commission contain in whole or in part the information required by the provisions of this chapter, the posting and filing of a copy of such schedules and classifications with the interstate commerce commission shall be deemed a compliance with the filing requirements of this chapter insofar as such schedules and classifications contain the information required by this chapter, and any additional or different information may be posted and filed in a supplementary schedule.

89 Acts, ch 57, §3 SF 169  
Section amended

### **327D.83 Rate hearing.**

If a schedule is filed with the department stating a rate, the department may, either upon complaint or upon its own motion, request the department of inspections and appeals to conduct a hearing concerning the propriety of the rate.

89 Acts, ch 273, §29 HF 163  
Section amended

### **327D.85 Rate proposal—review.**

At the hearing the department of inspections and appeals shall propose the rates on the schedule, in whole or in part, or others in lieu thereof, which the department of inspections and appeals finds are just and reasonable rates. The

action of the department of inspections and appeals is subject to review by the state department of transportation. The decision of the state department of transportation is the final agency action.

89 Acts, ch 273, §30 HF 163  
Section amended

### **327D.89 Complaint of violation.**

When a person complains to the department that the rate charged or published by a railway corporation, or the maximum rate fixed by law, is unreasonably high or discriminating, the department may investigate the matter, and request the department of inspections and appeals to conduct a hearing. The department of inspections and appeals shall give the parties notice of the time and place of the hearing.

89 Acts, ch 273, §31 HF 163  
Section amended

### **327D.90 Hearing—evidence.**

At the time of the hearing the department of inspections and appeals shall receive any evidence and listen to any arguments presented by either party relevant to the matter under investigation, and the burden of proof is not upon the person making the complaint. The complainant shall add to the showing made at the hearing whatever information the complainant then has, or can obtain from any source. The department of inspections and appeals shall propose just and reasonable rates, which may be adopted in whole or in part or modified as the state department of transportation determines.

89 Acts, ch 273, §32 HF 163  
Section amended

### **327D.128 Weighing—disagreement.**

If a railroad corporation and the owner, consignor, or consignee of car lots of bulk commodities cannot reach agreement relative to the weighing of the commodities, appeal may be made to the state department of transportation. The state department of transportation, after a hearing by the department of inspections and appeals, shall issue an order equitable to all parties including but not limited to allocation of costs and specification of the place and manner of weighing.

89 Acts, ch 273, §33 HF 163  
Section amended

## **CHAPTER 327F**

### **CONSTRUCTION AND OPERATION OF RAILWAYS**

#### **327F.38 Provision of potable water.**

All railroads shall provide sanitary cups and potable water which is refrigerated or is cooled with ice made from potable water in the locomotive engine and caboose car areas. For the purposes of this section, a locomotive engine includes all railroad engines used in train or yard service. The department shall enforce the requirements of this section upon the receipt of a written complaint.

89 Acts, ch 201, §1 SF 349  
NEW section

## CHAPTER 327G

FENCES, CROSSINGS, SWITCHES, PRIVATE BUILDINGS, SPUR TRACKS,  
AND REVERSION**327G.12 Overhead, underground, or more than one crossing.**

The owner of land may serve upon the railroad corporation a request in writing for more than one private crossing, or for an overhead or underground crossing, accompanied by a plat of the owner's land designating the location and character of crossing desired. If the railroad corporation refuses or neglects to comply within thirty days of a written request, the owner of the land may make written application to the department to determine the owner's rights. The department of inspections and appeals, after notice to the railroad corporation, shall hear the application and all objections to the application, and make an order which is reasonable and just, and if it requires the railroad company to construct any crossing or roadway, fix the time for compliance with the order and apportion the costs as appropriate. The order of the department of inspections and appeals is subject to review by the state department of transportation. The decision of the state department of transportation is the final agency action.

89 Acts, ch 273, §34 HF 163  
Section amended

**327G.16 Disagreement—application—notice.**

If the persons specified in section 327G.15 cannot reach an agreement, either party may make written application to the department requesting resolution of the disagreement. The department shall request the department of inspections and appeals to set a date for hearing. The department of inspections and appeals shall give ten days' written notice of the hearing date.

89 Acts, ch 273, §35 HF 163  
Section amended

**327G.17 Hearing—order.**

The department of inspections and appeals shall hear the evidence of each party to the controversy and shall make an order, which may include, pursuant to chapters 471 and 472, authority to condemn, resolving the controversy. The order shall include the portion of the expense to be paid by each party to the controversy. In determining what portion of the expense shall be paid by each party the department of inspections and appeals may consider the ratio of the benefits accruing to the railroad or the governmental unit or both, to the general public use and benefit.

The order of the department of inspections and appeals is subject to review by the state department of transportation. The decision of the state department of transportation is the final agency action.

89 Acts, ch 273, §36 HF 163  
Section amended

**327G.32 Blocking highway crossing.**

A railroad corporation or its employees shall not operate a train in such a manner as to prevent vehicular use of a highway, street, or alley for a period of time in excess of ten minutes except in any of the following circumstances:

1. When necessary to comply with signals affecting the safety of the movement of trains.
2. When necessary to avoid striking an object or person on the track.
3. When the train is disabled.
4. When necessary to comply with governmental safety regulations including, but not limited to speed ordinances and speed regulations.

An officer or employee of a railroad corporation violating a provision of this section is, upon conviction, subject to the penalty provided in section 327G.14. An employee is not guilty of a violation if the employee's action was necessary to comply with the direct order or instructions of a railroad corporation or its supervisors. Guilt is then with the railroad corporation.

Other portions of this section notwithstanding, a political subdivision may pass an ordinance regulating the length of time a specific crossing may be blocked if the political subdivision demonstrates that an ordinance is necessary for public safety or convenience. If an ordinance is passed, the political subdivision shall, within thirty days of the effective date of the ordinance, notify the department and the railroad corporation using the crossing affected by the ordinance. The ordinance does not become effective unless the department and the railroad corporation are notified within thirty days. The ordinance becomes effective thirty days after notification unless a person files an objection to the ordinance with the department. If an objection is filed the department shall notify the department of inspections and appeals which shall hold a hearing. After a hearing by the department of inspections and appeals, the state department of transportation may disapprove the ordinance if public safety or convenience does not require the ordinance. The decision of the state department of transportation is final agency action. The ordinance approved by the political subdivision is prima facie evidence that the ordinance is adopted to preserve public safety or convenience.

The department of inspections and appeals when considering rebuttal evidence shall weigh the benefits accruing to the political subdivision as they affect the general public use compared to the burden placed on the railroad operation. Public safety or convenience may include, but is not limited to, high traffic density at a specific crossing of a main artery or interference with the flow of authorized emergency vehicles.

A resolution regulating the length of time a specific crossing may be blocked, which was adopted before July 1, 1989, is an ordinance for the purposes of this section.

89 Acts, ch 39, §4, 5 SF 500; 89 Acts ch 273, §37 HF 163  
See Code editor's note to §22.7  
Section amended

### **327G.62 Controversies—hearing—order—review.**

When a disagreement arises between a railroad corporation, its grantee, or its successor in interest, and the owner, lessee, or licensee of a building or other improvement, including trackage, used for receiving, storing, transporting, or manufacturing an article of commerce transported or to be transported, situated on a present or former railroad right-of-way or on land owned or controlled by the railroad corporation, its grantee, or its successor in interest, as to the terms and conditions on which the article is to be continued or removed, the railway corporation, its grantee, or its successor in interest, or the owner, lessee, or licensee may make written application to the department. The department shall notify the department of inspections and appeals which shall hear and determine the controversy and make an order which is just and equitable between the parties. That order is subject to review by the state department of transportation. The decision of the state department of transportation is final agency action.

89 Acts, ch 273, §38 HF 163  
Section amended

### **327G.65 Cost of construction.**

The railroad corporation may require the person primarily to be served to pay the legitimate cost and expense of acquiring, by condemnation or purchase, the necessary right-of-way for the spur track and of constructing it, as determined in separate items by the department. Except as provided in section 327G.66, the total cost as ascertained by the department shall be deposited with the railroad

corporation before it is required to incur expense. If an agreement cannot be reached, the question shall be referred to the department which may, after a hearing conducted by the department of inspections and appeals, issue an order.

89 Acts, ch 273, §39 HF 163  
Section amended

## CHAPTER 330

### AIRPORTS

#### **330.23 No restriction on administrative agencies.**

This chapter does not prohibit a city from establishing an administrative agency pursuant to chapter 392 to manage and control all or part of its airport in lieu of an airport commission under this chapter. A city may abolish an airport commission and provide for the management and control of its airport by an administrative agency.

Sections 330.17 through 330.20 do not apply to the abolition of an airport commission by a city pursuant to this section for the purpose of establishing an administrative agency pursuant to chapter 392 to manage and control all or part of its airport. The commission shall stand abolished sixty days from the date of the city council's final approval abolishing the airport commission pursuant to this section, unless the council designates a different effective date.

89 Acts, ch 182, §1 HF 551  
NEW unnumbered paragraph 2

## CHAPTER 330A

### AVIATION AUTHORITIES

#### **330A.3 Creation.**

One or more municipalities may provide by ordinance for the creation of an airport authority in the manner and for the purposes provided under this chapter. The authority shall be created by agreement adopted by ordinance between two or more municipalities, or by ordinance of a single municipality. An authority is a public instrumentality and public body corporate to be known as ".....*Airport Authority*". An airport authority may exercise its jurisdiction, powers, and duties as set forth in this chapter. Provisions for the disposition of the authority's rights and properties in the event of dissolution of the authority shall be set forth in the agreement or ordinance creating the authority.

89 Acts, ch 182, §2 HF 551  
Section amended

#### **330A.4 Committee.** Repealed by 89 Acts, ch 182, §12. HF 551

#### **330A.5 Board.**

Each authority shall have a board of an odd number of three or more members and the board shall be the governing body of the authority exercising all of the rights, duties, and powers conferred by this chapter upon the authority. The board members shall be appointed by the governing bodies of the member municipalities. The number to be appointed by each municipality shall be provided for in the agreement or ordinance creating the authority. However, an elected official or full-time paid employee of a member municipality is not eligible for appointment to the board. Board members shall serve for terms of four years at the pleasure of the municipality appointing the members except members of the initial board shall determine their respective terms by lot so the terms of one-half of the

members expire at the end of two years. The remaining initial terms shall expire at the end of four years. Each member of the board shall qualify by taking an oath to faithfully perform the duties of office. Within forty-five days after a vacancy occurs on the board by death, resignation, change of residence or removal of a member, or from any other cause, the successor of the member shall be appointed by the member municipality represented by the vacancy and shall serve until the term expires. The board shall, within ten days after its appointment, organize by electing a chairperson, a secretary, and a treasurer, each for a term of two years. The treasurer shall execute an adequate surety bond in a penal sum to be fixed by the authority, conditioned upon the faithful performance of the duties of office, the premium on which shall be paid by the authority. Board members and officers shall serve until their successors are duly elected and qualified. A salary shall not be paid to a board member; however, each board member shall be reimbursed for actual expenses incurred in the performance of the member's duties. All actions by an authority require the affirmative vote of a majority of the board of the authority.

89 Acts, ch 182, §3 HF 551  
Section amended

### 330A.6 Creation of an authority.

1. Whenever the governing body of any municipality shall desire to participate in the creation of an authority it shall adopt a resolution signifying its intention to do so and shall publish said resolution at least one time in a newspaper of general circulation in such municipality giving notice of a hearing to be held on the question of the municipality's entry into such authority. Such resolution shall be published at least fourteen days prior to the date of hearing, and shall contain therein the following information:

- a. Intention to join in the creation of an authority pursuant to the provisions of this chapter.
  - b. The names of other municipalities which have expressed their intention to join in the creation of the authority.
  - c. Number of board members to be appointed by the municipality.
  - d. Name of authority.
  - e. Place, date and time of hearing.
2. After the hearing, and if in the best interests of the municipality, the municipality shall enact an ordinance authorizing the creation of the authority.

89 Acts, ch 182, §4, 5 HF 551  
Subsection 1, paragraph c amended  
Subsection 2 amended

### 330A.7 Withdrawal.

1. One or more of the member municipalities may withdraw from the authority, except that a municipality shall not withdraw after any obligations have been incurred by the authority unless satisfactory provision has been made by the withdrawing municipality for the payment of its portion of the outstanding obligations. If an authority has been created pursuant to this chapter, a municipality which did not join in the original agreement may subsequently join the authority with the approval of the member municipalities.

2. A municipality wishing to withdraw from or to become a member of an existing authority shall signify its intention by resolution and shall publish the resolution at least one time in a newspaper of general circulation in the municipality giving notice of a hearing to be held on the question of withdrawing or joining and its intention to withdraw or join. The resolution shall be published at least fourteen days prior to the date of the hearing. A withdrawing municipality shall state in the resolution how it intends to pay its portion of the outstanding obligations of the authority, if any. A joining municipality shall state in the resolution the information required in section 330A.6. A copy of the resolution

shall be certified to the authority by the municipality at least fourteen days in advance of the hearing. The board shall by resolution indicate whether a satisfactory provision has been made for the payment of the outstanding obligations of the authority, as required under subsection 1. After the hearing and if the outstanding obligations of the authority have been adequately provided for by the municipality, the municipality may enact an ordinance to withdraw from or join the authority.

3. An application to withdraw or join shall be submitted to the authority and shall in all cases be executed by the proper officers of the withdrawing or incoming municipality under its municipal seal and accompanied by a certified copy of the authorizing ordinance, and shall be joined in by the proper officers of the governing body of the authority.

4. A municipality that joins initially or subsequently or withdraws shall file notice of such joining or withdrawal with the secretary of state and the county recorder in which such municipality is located. Upon its creation, the authority shall file with the secretary of state and with the county recorder wherein each municipality or part thereof is located a copy of the agreement creating the authority.

89 Acts, ch 182, §6 HF 551  
Subsections 1 and 2 amended

### **330A.8 Purposes and powers—general.**

An authority is hereby granted the following rights and powers, and shall have and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the powers enumerated in this chapter:

1. To sue and be sued in all courts.
2. To adopt, use, and alter at will a seal.
3. To acquire, hold, construct, improve, maintain, operate, own, and lease as lessor or lessee, aviation facilities, provided that no lease of the authority's property whose primary term is in excess of three years shall be entered by the authority until after publication of notice of the terms of the proposed lease once in the county in which said property is located, in the manner provided by section 618.14, together with the date, time, and place of a public hearing which shall be held not less than fourteen days thereafter, at which the authority will hear proponents for and objectors against the lease and may, thereafter, cause it to be executed.
4. To acquire, purchase, hold, own, operate, and lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of an authority and this chapter, and to sell, mortgage, lease as lessor, transfer, and dispose of any property or interest therein at any time acquired by it.
5. To enter into and make leases, either as lessee or lessor, for such period or periods of time and under such terms and conditions as an authority shall determine. Such leases may be entered into for buildings, structures, or facilities constructed or acquired or to be constructed or acquired by an authority, or may be entered into for lands owned by an authority where the lessee of said lands agrees as a consideration for said lease to construct or acquire buildings, structures, or facilities on said lands which will become the property of an authority under such terms, rentals, and other conditions as the authority shall deem proper.
6. To acquire by purchase, lease, or otherwise, and to construct, improve, maintain, repair, and operate aviation facilities.
7. To fix, alter, charge, establish, and collect rates, fees, rentals, and other charges for the services and facilities of aviation facilities, or any part thereof, at reasonable and uniform rates to be determined exclusively by an authority for the purposes of carrying out the provisions of this chapter.

8. To borrow money, make and issue negotiable bonds, certificates, refunding bonds, and other obligations (herein called "bonds") and notes of an authority and to secure the payment of such bonds or any part thereof by a pledge of any or all of an authority's revenues, rates, fees, rentals, or other charges, and any other funds which it has a right to, or may hereafter have the right to pledge for such purposes (hereafter sometimes referred to as "revenues"), and to mortgage its property as security for the payment of such bonds; and in general, to provide for the security of said bonds and the rights and remedies of the holders thereof. Such bonds may be issued to finance either one or more or a combination of aviation facilities and the revenues of any one or more aviation facilities may, subject to any prior rights of bondholders, be pledged for any one or more or a combination of aviation facilities. Any revenues from existing aviation facilities theretofore constructed or acquired pursuant to this chapter or existing laws, or existing aviation facilities constructed or acquired by an authority from any source may be pledged for any one or more or a combination of aviation facilities financed under this chapter, regardless of whether or not such existing aviation facilities are then being improved or financed by the proceeds of the bonds to be issued to finance the one or more or the combination of aviation facilities for which such revenues of such existing aviation facilities are to be pledged.

9. To make contracts of every kind and nature and to execute all instruments necessary or convenient for the carrying on of its business.

10. Without limitation of the foregoing, to borrow money and accept grants, contributions or loans from, and to enter into contracts, leases, or other transactions with, municipal, county, state, or federal government.

11. To have the power of eminent domain, such power to be exercised in the manner provided by law for municipal corporations of this state.

12. To pledge, hypothecate, or otherwise encumber all or any part of the revenues, rates, fees, rentals, or other charges or receipts of an authority as security for all or any of the obligations issued by an authority.

13. To pledge, mortgage, hypothecate, or otherwise encumber all or any part of the property, real or personal, of the authority as security for all or any of the obligations issued by an authority.

14. To employ technical experts necessary to assist an authority in carrying out or exercising any powers granted hereby, including but not limited to architects, engineers, attorneys, fiscal advisors, fiscal agents, investment bankers, and aviation consultants.

15. To do all acts and things necessary or convenient for the promotion of its business and the general welfare of an authority, in order to carry out the powers granted to it by this chapter or any other laws. An authority shall have no power at any time or in any manner to pledge the taxing power of the state or any political subdivision or agency thereof, nor shall any of the obligations issued by an authority be deemed to be an obligation of the state or any political subdivision or agency thereof secured by and payable from ad valorem taxes thereof, nor shall the state or any political subdivision or agency thereof be liable for the payment of principal or of interest on such obligations except from the special funds provided for in this chapter.

16. To designate employees upon whom are conferred all the powers of a peace officer as defined in section 801.4.

<sup>89</sup> Acts, ch 182, §7 HF 551  
NEW subsection 16

### **330A.20 Dissolution of an authority.**

When an authority has fully discharged all of its debts and obligations or has arranged for the assumption of its debts and obligations by another public agency, it may be dissolved by unanimous consent of the member municipalities upon enactment of an ordinance to dissolve the authority by each member municipality.

If all members withdraw from the authority, the authority is dissolved. When the business and affairs of an authority have been closed upon dissolution, that fact shall be certified by the chairperson of the board to the recorders of the counties in which the authority was situated and to the secretary of state.

89 Acts, ch 182, §8 HF 551  
NEW section

### **330A.21 Transition.**

For those authorities established prior to July 1, 1989, the terms of all board members in office shall expire on December 31, 1989. The provision for successor board members shall be by agreement of the member municipalities and in accordance with section 330A.5. Authorities in existence prior to July 1, 1989, remain in existence on or after July 1, 1989, except as provided in this chapter.

89 Acts, ch 182, §9 HF 551  
NEW section

## **CHAPTER 330B**

### **QUAD CITIES INTERSTATE METROPOLITAN AUTHORITY COMPACT**

#### **330B.1 Quad cities interstate metropolitan authority compact.**

The quad cities interstate metropolitan authority compact is entered into and enacted into law with the state of Illinois if the state of Illinois joins the compact, in the form substantially as follows:

#### **Article 1—SHORT TITLE**

This compact may be cited as the "*Quad Cities Interstate Metropolitan Authority Compact*".

#### **Article 2—AUTHORIZATION**

The states of Illinois and Iowa authorize the creation of the quad cities interstate authority to include the territories of Scott county in the state of Iowa and Rock Island county in the state of Illinois.

#### **Article 3—PURPOSES**

The purposes of the authority are to provide facilities and to foster cooperative efforts, all for the development and public benefit of its territory. This compact shall be liberally interpreted to carry out these purposes.

#### **Article 4—CREATION**

The authority is created when the secretary of state of Iowa certifies to the secretary of state of Illinois that a majority of the electors of Scott county voting on the proposition voted to approve creation of the authority and the secretary of state of Illinois certifies to the secretary of state of Iowa that a majority of the electors of Rock Island county voting on the proposition voted to approve creation of the authority. A referendum approving creation of the authority must be held before January 1, 1993.

#### **Article 5—BOARD MEMBERS**

The authority shall be governed by a board of not more than sixteen members, one-half of whom are residents of Rock Island county, Illinois, and one-half of whom are residents of Scott county, Iowa. Iowa members shall be chosen in the manner and for the terms fixed by the law of Iowa. Illinois members shall be chosen in the manner and for the terms fixed by the law of Illinois.

### Article 6—BOARD OFFICERS

The board shall elect annually from its members a chairperson, a vice chairperson, a secretary, and other officers it determines necessary.

### Article 7—BOARD OPERATIONS

The board shall adopt bylaws governing its meetings, fiscal year, election of officers, and other matters of procedure and operation.

### Article 8—BOARD EXPENSES AND COMPENSATION

(a) Members shall be reimbursed for reasonable expenses incurred while carrying out official duties.

(b) Members shall be compensated as authorized by substantially identical laws of the states of Illinois and Iowa.

### Article 9—EMPLOYEES

(a) The board shall hire an executive director, a treasurer, and other employees it determines necessary and shall fix their qualifications, duties, compensation, and terms of employment.

(b) The executive director, treasurer, and other employees shall have no pension benefits or rights of collective bargaining other than those authorized by substantially identical laws of the states of Iowa and Illinois.

### Article 10—GENERAL POWERS

The authority has the following general powers:

- (1) To sue and be sued.
- (2) To own, operate, manage, or lease facilities within the territory of the authority. "Facility" means an airport, port, wharf, dock, harbor, bridge, tunnel, terminal, industrial park, waste disposal system, mass transit system, parking area, road, recreational area, conservation area, or other project beneficial to the territory of the authority as authorized by substantially identical laws of the states of Iowa and Illinois, together with related or incidental fixtures, equipment, improvements, and real or personal property.
- (3) To fix and collect reasonable fees and charges for the use of its facilities.
- (4) To own or lease interests in real or personal property.
- (5) To accept and receive money, services, property, and other things of value.
- (6) To disburse funds for its lawful activities.
- (7) To enter into agreements with political subdivisions of the state of Illinois or Iowa or with the United States.
- (8) To pledge or mortgage its property.
- (9) To perform other functions necessary or incidental to its purposes and powers.
- (10) To exercise other powers conferred by substantially identical laws of the states of Iowa and Illinois.

### Article 11—EMINENT DOMAIN

(a) The authority has the power to acquire real property by eminent domain.

(b) Property in the state of Iowa shall be acquired under the laws of the state of Iowa. Property in the state of Illinois shall be acquired under the laws of the state of Illinois.

### Article 12—INDEBTEDNESS

(a) The authority may incur indebtedness subject to debt limits imposed by substantially identical laws of the states of Illinois and Iowa.

(b) Indebtedness of the authority shall not be secured by the full faith and credit or the tax revenues of the state of Iowa or Illinois, or a political subdivision

of the state of Iowa or Illinois other than the authority or as otherwise authorized by substantially identical laws of the states of Iowa and Illinois.

(c) Bonds shall be issued only under terms authorized by substantially identical laws of the states of Illinois and Iowa.

#### Article 13—TAXES

(a) The authority shall have no independent power to tax.

(b) A political subdivision of the state of Iowa or Illinois shall not impose taxes to fund the authority or any of the authority's projects except as specifically authorized by substantially identical laws of the states of Illinois and Iowa.

#### Article 14—REPORTS

The authority shall report annually to the governors and legislatures of the states of Iowa and Illinois concerning its facilities, activities, and finances and may make recommendations for state legislation.

#### Article 15—PENALTIES

The states of Illinois and Iowa may provide by substantially identical laws for the enforcement of the ordinances of the authority and for penalties for the violation of those ordinances.

#### Article 16—SUBSTANTIALLY IDENTICAL LAWS

Substantially identical laws of the states of Iowa and Illinois which are in effect before the authority is created shall apply unless the laws are contrary to or inconsistent with the provisions of this compact. A question of whether the laws of the states of Iowa and Illinois are substantially identical may be determined and enforced by a federal district court.

#### Article 17—DISSOLUTION

The authority may be dissolved by independent action of a political subdivision of the state of Iowa or the state of Iowa as authorized by law of the state of Iowa or by independent action of a political subdivision of the state of Illinois or the state of Illinois as authorized by law of the state of Illinois.

#### Article 18—SUBJECT TO LAWS AND CONSTITUTIONS

This compact, the enabling laws of the states of Iowa and Illinois, and the authority are subject to the laws and Constitution of the United States and the Constitutions of the states of Illinois and Iowa.

#### Article 19—CONSENT OF CONGRESS

The attorneys general of the states of Iowa and Illinois shall jointly seek the consent of the Congress of the United States to enter into or implement this compact if either of them believes the consent of the Congress of the United States is necessary.

#### Article 20—BINDING EFFECT

This compact and substantially identical enabling laws are binding on the states of Illinois and Iowa to the full extent allowed without the consent of Congress. If the consent of Congress is necessary, this compact and substantially identical enabling laws are binding on the states of Iowa and Illinois to the full extent when consent is obtained.

#### Article 21—SIGNING

This compact shall be signed in duplicate by the speakers of the houses of representatives of the states of Illinois and Iowa. One signed copy shall be filed

with the secretary of state of Iowa and the other with the secretary of state of Illinois.

89 Acts, ch 213, §1 HF 721  
NEW section

## CHAPTER 331

### COUNTY HOME RULE IMPLEMENTATION

#### 331.209 Plan "two" terms of office.

If plan "two" is selected pursuant to section 331.206 or 331.207, the board shall be elected as provided in this section.

1. Before December 15 of the nonelection year following each federal decennial census the board shall divide the county into a number of supervisor districts corresponding to the number of supervisors in the county. However, if the plan is selected pursuant to section 331.207, the board shall divide the county before March 15 of the election year. The supervisor districts shall be drawn, to the extent applicable, in compliance with the redistricting standards provided for legislative and congressional districts in section 42.4. If more than one incumbent supervisor resides in the same supervisor district after the districts have been redrawn following the federal decennial census, the terms of office of those supervisors shall expire on the first day of January that is not a Sunday or a holiday following the next general election.

2. Each supervisor must reside in a separate supervisor district but shall be elected by the electors of the county at large. Election ballots shall be prepared to specify the district which each candidate seeks to represent and each elector may cast a vote for one candidate from each district for which a supervisor is to be chosen in the general election.

3. The board may redesignate supervisor districts only once in two years. If the board redesignates districts, the redesignation must be completed and available to the public by December 15 of the year before the election to be applicable in that election year. This subsection does not lengthen or diminish the term of office of a member of the board as a result of the redesignation and districts shall not be redesignated except in compliance with this section.

4. At the primary and general elections the number of supervisors, or candidates for the offices, which constitute the board in the county shall be elected as provided in this section. Terms of supervisors shall be the same as provided in section 331.208.

5. Each county board shall notify the state commissioner of elections whenever the boundaries of supervisor districts are changed and shall provide a map delineating the new boundary lines. Upon failure of a county board to make the required changes by the dates specified by this section as determined by the state commissioner of elections, the state commissioner of elections shall make or cause to be made the necessary changes as soon as possible, and shall assess to the county the expenses incurred in so doing. The state commissioner of elections may request the services of personnel and materials available to the legislative service bureau to assist the state commissioner in making any required changes in supervisor district boundaries which become the state commissioner's responsibility.

89 Acts, ch 296, §38 SF 141  
Subsection 5 amended

#### 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".

13. The board of supervisors may waive a tax penalty, interest, or costs related to the collection of a tax if the board finds that a clerical error resulted in the

penalty, interest, or cost. This subsection does not apply to bonded special assessments without the approval of the affected taxing jurisdiction.

89 Acts, ch 101, §1 SF 364  
NEW subsection 13

### 331.306 Petitions of eligible electors.

If a petition of the voters is authorized by this chapter, the petition is valid if signed by eligible electors of the county equal in number to at least ten percent of the votes cast in the county for the office of president of the United States or governor at the preceding general election, unless otherwise provided by state law. The petition shall include the signatures of the petitioners, a statement of their place of residence, and the date on which they signed the petition.

Petitions authorized by this chapter shall be filed with the board of supervisors not later than eighty-two days before the date of the general election if the question is to be voted upon at the general election. If the petition is found to be valid, the board of supervisors shall, not later than sixty-nine days before the general election, notify the county commissioner of elections to submit the question to the qualified electors at the general election.

89 Acts, ch 136, §69 SF 371  
Section 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 as provided in rule of civil procedure 56.1, by certified mail addressed to the defendant at the defendant's last known mailing address, return receipt requested, or by publication in the manner as provided in rule of civil procedure 60 and subject to the conditions of rule of civil procedure 60.1. 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 matter shall be tried before a magistrate or district associate judge in the same manner as a small claim.
  - b. 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.

c. 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.

d. The defendant may be represented by counsel of the defendant's own selection and at the defendant's own expense.

e. The defendant may answer by admitting or denying the infraction.

f. 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 do any of the following:

a. Impose a civil penalty by entry of a personal judgment against the defendant.

b. Direct that payment of the civil penalty be suspended or deferred under conditions imposed by the court.

c. Grant appropriate alternative relief ordering the defendant to abate or cease the violation.

d. Authorize the county to abate or correct the violation.

e. Order that the county's costs for abatement or correction of the violation be entered as a personal judgment against the defendant or assessed against the property where the violation occurred, or both.

If a defendant willfully violates the terms of an order imposed by the court, the failure is contempt.

The magistrate or district associate judge shall have jurisdiction to assess or enter judgment for costs of abatement or correction in an amount not to exceed the jurisdictional amount for a money judgment in a civil action pursuant to section 631.1, subsection 1, for magistrates and section 602.6306, subsection 2, for district associate judges. If the county seeks abatement or correction costs in excess of those amounts, the case shall be referred to the district court for hearing and entry of an appropriate order. The procedure for hearing in the district court shall be the same procedure as that for a small claims appeal pursuant to section 631.13.

10. A defendant or the county may file a motion for a new trial or may appeal the decision of the magistrate or district associate judge to the district court. The procedure on appeal shall be the same as for a small claim pursuant to section 631.13. A factual determination made by the trial court, supported by substantial evidence as shown in the record, is binding for purposes of appeal relating to the violation at issue, but shall not be admissible or binding as to any future violation for the same or similar ordinance provision by the same defendant.

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.

12. The issuance of a civil citation for a county infraction or the ensuing court proceedings do not provide an action for false arrest, false imprisonment, or malicious prosecution.

89 Acts, ch 150, §1-4 HF 596

Section 331.307, subsection 12, Code 1987, which was inadvertently omitted in the 1987 Code Supplement and the 1989 Code, is published here with the amendment enacted in 89 Acts, ch 150, §4; 89 Acts, ch 150, §9 HF 596

Subsection 4, unnumbered paragraph 1 amended

Subsection 5, NEW paragraph a

Subsections 9, 10 and 12 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 69.14A, and make appointments in accordance with section 69.16 unless a special election is called pursuant to section 69.14A.
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. The board shall furnish the officers with fuel, lights, and office supplies. However, the board is not required to furnish the county attorney with law books. The board shall not furnish an office also occupied by a practicing attorney to an officer other than the county attorney.
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.

89 Acts, ch 215, §5 HF 522  
Subsection 3 amended

### **331.382 Powers and limitations relating to services.**

1. The board may exercise the following powers in accordance with the sections designated, and may exercise these or similar powers under its home rule powers or other provisions of law:

a. Establishment of parks outside of cities as provided in section 111.34.  
b. Establishment of a water recreational area as provided in sections 111.59 to 111.78.

c. Establishment of a merged area hospital as provided in chapter 145A.  
d. Acquisition and operation of a limestone quarry for the sale of agricultural lime, in accordance with chapter 202.

e. Provision of preliminary diagnostic evaluation before admissions to state mental health institutes as provided in sections 225C.14 through 225C.17.

f. Establishment of a community mental health center as provided in chapter 230A.

g. Establishment of a county care facility as provided in chapter 253, and sections 135C.23 and 135C.24.

h. Provision of relocation programs and payments as provided in chapter 316.  
i. Establishment of an airport commission as provided in sections 330.17 to 330.20.

j. Creation of an airport authority as provided in chapter 330A.

2. The power to establish reserve peace officers is subject to chapter 80D.

3. The power to legislate in regard to chemical substance abuse is subject to section 125.40.

4. The power to establish a county hospital is subject to the licensing requirements of chapter 135B and the power to establish a county health care facility is subject to the licensing requirements of chapter 135C.

5. The board shall not regulate, license, inspect, or collect license fees from food service establishments except as provided in chapter 170A or from hotels except as provided in chapter 170B or for food and beverage vending machines except as provided in section 191A.14.

6. The power to operate juvenile detention and shelter care homes is subject to approval of the homes by the director of the department of human services or the director's designee, as provided in section 232.142.

7. If a law library is provided in the county courthouse, judges of the district court of the county shall supervise and control the law library.

8. The board is subject to chapter 357 to 358, 455, 456 to 467 or 467C, as applicable, in acting relative to a special district authorized under any of those chapters.

However, the board may assume and exercise the powers and duties of a governing body under chapter 357, 357A, 357B, 358 or 462 if a governing body established under one of those chapters has insufficient membership to perform its powers and duties, and the board, upon petition of the number of property owners within a proposed district and filing of a bond as provided in section 357A.2, may establish a service district within the unincorporated area of the county and exercise within the district the powers and duties granted in chapter 357, 357A, 357B, 357C, 358, 359, 384, division IV or 462.

9. The power to establish and administer an air pollution control program in lieu of state administration is subject to sections 455B.144 and 455B.145.

89 Acts, ch 20, §17 SF 152  
Subsection 1, paragraph h amended

**331.427 General fund.**

1. Except as otherwise provided by state law, county revenues from taxes and other sources for general county services shall be credited to the general fund of the county, including revenues received under sections 84.21, 98.35, 98A.6, 101A.3, 101A.7, 110.12, 123.36, 123.143, 176A.8, 246.908, 321.105, 321.152, 321.192, 321G.7, 331.554, subsection 6, 341A.20, 364.3, 368.21, 422.65, 422A.2, 428A.8, 430A.3, 433.15, 434.19, 441.68, 445.52, 445.57, 533.24, 556B.1, 567.10, 583.6, 906.17, and 911.3, and chapter 405A, and the following:

- a. License fees for business establishments.
  - b. Moneys remitted by the clerk of the district court and received from a magistrate or district associate judge for fines and forfeited bail imposed pursuant to a violation of a county ordinance.
  - c. Other amounts in accordance with state law.
2. The board may make appropriations from the general fund for general county services, including but not limited to the following:
- a. Expenses of a joint disaster services and emergency planning administration under section 29C.9.
  - b. Development, operation, and maintenance of memorial buildings or monuments under chapter 37.
  - c. Purchase of voting machines under chapter 52.
  - d. Expenses incurred by the county conservation board established under chapter 111A, in carrying out its powers and duties.
  - e. Local health services. The county auditor shall keep a complete record of appropriations for local health services and shall issue warrants on them only on requisition of the local or district health board.
  - f. Expenses relating to county fairs, as provided in chapter 174.
  - g. Maintenance of a juvenile detention home under chapter 232.
  - h. Relief of veterans under chapter 250.
  - i. Care and support of the poor under chapter 252.
  - j. Operation, maintenance, and management of a health center under chapter 346A.
  - k. For the use of a nonprofit historical society organized under chapter 504 or 504A, a city-owned historical project, or both.
  - l. Services listed in section 331.424, subsection 1 and section 331.554.
3. Appropriations specifically authorized to be made from the general fund shall not be made from the rural services fund, but may be made from other sources.

89 Acts, ch 83, §48 SF 112

Subsection 1, unnumbered paragraph 1 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.

(11) The acquiring, developing, and improving of a geographic computer data base system suitable for automated mapping and facilities management.

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.

89 Acts, ch 189, §2 HF 675

Subsection 2, paragraph b, NEW subparagraph (11)

**331.485 through 331.491** Transferred to §468.585 through 468.591; 89 Acts, ch 126, §2, 3 SF 479

### **331.512 Duties relating to taxation.**

The auditor shall:

1. Include on the tax list:
  - a. The levy of county taxes authorized by the board as provided by law.
  - b. The levy of taxes to pay the principal and interest on bonds as provided in sections 76.2 and 76.3.
  - c. The levy of a mulct tax against the property of a person maintaining a nuisance as certified by the clerk of the district court as provided in section 99.28.
  - d. The levy of a tax to pay the expenses incurred and penalties assessed by the state fire marshal relating to the repair or destruction of fire hazards as provided in sections 100.27 to 100.29.

e. The costs of erecting, rebuilding, or repairing a fence under order of the fence viewers as provided in section 113.6.

f. A levy against the property of a bee owner sufficient to pay the costs of disinfecting or destroying diseased bees as provided in section 160.8.

g. The levy for taxes for the county brucellosis and tuberculosis eradication fund as provided in section 165.18.

h. The levy of a tax for the operation of an area vocational school or an area community college as provided in section 280A.17.

i. The levy of a tax to pay the principal and interest under a loan agreement entered into by merged area school authorities as provided in section 280A.22.

j. The levy of community school taxes as provided by law.

k. The levy of a tax as certified by the board of trustees of a sanitary district as provided in section 358.18.

l. The levy of taxes certified by the board of trustees of a township as provided in chapters 359 and 360.

m. The levy of city taxes and assessments as certified by the city council as provided by law.

n. Other tax levies as provided by law.

2. Carry out duties relating to tax sales of property within special charter cities as provided in sections 420.220 to 420.229.

3. Carry out duties relating to the homestead tax credit and agricultural land tax credit as provided in chapters 425 and 426.

4. Prepare and certify to the county treasurer the total amount of dollars for military service tax credits claimed and allowed as provided under sections 426A.3 and 427.3 to 427.6.

5. Carry out duties relating to the preparation of the tax list as provided in sections 427A.3, 427A.6, 428.4, 441.17, 441.21, 443.2 to 443.9 and 443.21.

6. Carry out duties relating to the valuation and taxation of telegraph and telephone companies as provided in sections 433.8 to 433.10 including mapping requirements as provided in sections 433.14 and 433.15.

7. Transmit to other local government officials the order stating the length of the main track and the assessed value of each railway located within the county as provided in section 434.22.

8. Carry out duties relating to the valuation and taxation of express companies as provided in sections 436.9 to 436.11.

9. Transmit to other local government officials the order stating the length of the electric transmission lines and the assessed value of the property of the electric transmission line companies located within the county as provided in section 437.10.

10. Carry out duties relating to the valuation and taxation of pipeline companies as provided in sections 438.14 to 438.16.

11. Furnish the assessor a plat book which is platted with the lands and lots within the assessment district as provided in section 441.29. The auditor, with the approval of the board of supervisors, may establish a permanent real estate index number system as provided in section 441.29.

12. Carry out duties relating to levy of school taxes as provided in chapter 257.

13. Carry out duties relating to the computation of tax rates as provided under chapter 444.

14. Provide for the enforcement of a lien against the taxable personal property of nonresidents as provided in sections 445.44 and 445.45.

15. Keep a complete account of each separate fund or tax in the county treasury as provided in section 445.59.

16. When an order of apportionment is made, correct the tax books or records in the auditor's possession as provided in section 449.4.

17. Carry out other duties as provided by law.

89 Acts, ch 135, §115 HF 535  
 1989 amendment to subsection 12 takes effect July 1, 1990, for purpose of computations required for school budget year  
 beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535  
 Subsection 12 amended

**331.609 Federal liens.**

1. *a.* Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens must be filed or recorded in accordance with this section.

*b.* Notices of liens upon real property for obligations payable to the United States, and certificates and notices affecting the liens shall be recorded in the office of the recorder of the county in which the real property subject to a federal lien is situated.

*c.* Notices of federal liens upon tangible or intangible personal property for obligations payable to the United States and certificates and notices affecting the liens shall be filed or recorded as follows:

(1) If the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state.

(2) In all other cases, in the office of the recorder of the county where the person against whose interest the lien applies resides at the time of recording of the notice of lien.

2. Certification of notices of liens, certificates, or other notices affecting federal liens by the secretary of the treasury of the United States, or a designee of the secretary, or by any official or entity of the United States responsible for the filing or certification of any other lien, entitles them to be filed or recorded, and no other attestation, certification, or acknowledgment is necessary.

3. *a.* If a notice of federal lien, a refiling or rerecording of a notice of lien, or a notice of revocation of a certificate described in paragraph "b" is presented to the filing officer:

(1) If the filing officer is the secretary of state, the secretary shall cause the notice to be marked, held, and indexed in accordance with section 554.9403, subsection 4, as if the notice were a financing statement within the meaning of that section.

(2) If the filing officer is a recorder, the recorder shall endorse on the notice the recorder's identification and the date and time of receipt and record it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the official or entity certifying the lien, and the total appearing on the notice of lien.

*b.* If a certificate of release, nonattachment, discharge, or subordination of a lien is presented to the secretary of state for filing, the secretary shall:

(1) Cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the uniform commercial code, except that the notice of lien to which the certificate relates shall not be removed from the files.

(2) Cause a certificate of discharge or subordination to be marked, held, and indexed as if the certificate were a release of collateral within the meaning of the uniform commercial code.

*c.* If a refiled notice of federal lien referred to in paragraph "a" or any of the certificates or notices referred to in paragraph "b" is presented for recording with a recorder, the recorder shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate with the date of recording in an alphabetical index.

*d.* Upon request of a person, the filing or recording officer shall issue a certificate showing whether there is on file or recorded, on the date and hour

stated, a notice of federal lien or certificate or notice affecting the lien, filed or recorded on or after July 1, 1989, naming a particular person, and if a notice or certificate is on file or recorded, giving the date and hour of filing or recording of each notice or certificate. The fee for a certificate is six dollars. Upon request the filing or recording officer shall furnish a copy of any notice of federal tax lien or notice or certificate affecting a federal tax lien for a fee of five dollars per page.

4. The fee for filing or recording, and indexing each notice of lien or certificate or notice affecting the lien shall be as provided in section 331.604. The officer shall bill the internal revenue service or any other appropriate federal agency on a monthly basis for fees for documents filed or recorded by it.

5. Filing or recording officers with whom notices of federal tax liens, certificates, and notices affecting the liens have been filed or recorded on or before July 1, 1970, shall, after that date, continue to maintain a file labeled "*federal tax lien notices filed prior to July 1, 1970*" containing notices and certificates filed in numerical order of receipt. If a notice of lien was filed or recorded on or before July 1, 1970, a certificate or notice affecting the lien shall be filed or recorded in the same office.

6. Filing or recording officers with whom notices of federal tax liens, certificates, and notices affecting the liens have been filed or recorded after July 1, 1970, and before July 1, 1989, shall, after July 1, 1989, continue to maintain a file labeled "*federal tax lien notices filed after July 1, 1970, and before July 1, 1989*" containing notices and certificates filed or recorded in numerical order of receipt. If a notice of lien was filed or recorded on or after July 1, 1970, and before July 1, 1989, a certificate or notice affecting the lien shall be filed or recorded in the same office.

7. This section may be cited as the uniform federal lien registration Act.

89 Acts, ch 36, §1 SF 276  
Section amended

### **331.756 Duties of the county attorney.**

The county attorney shall:

1. Diligently enforce or cause to be enforced in the county, state laws and county ordinances, violations of which may be commenced or prosecuted in the name of the state, county, or as county attorney, except as otherwise provided.

2. Appear for the state and the county in all cases and proceedings in the courts of the county to which the state or the county is a party, except actions or proceedings resulting from a change of venue from another county, and appear in the appellate courts in all cases in which the county is a party, and appear in all actions or proceedings which are transferred on a change of venue to another county or which require the impaneling of a jury from another county and in which the county or the state is a party.

3. Prosecute all preliminary hearings for charges triable upon indictment.

4. Prosecute misdemeanors 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, device, and cosmetic Act as requested by the board of pharmacy examiners as provided in section 203B.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. Reserved.

74. Bid on real estate on behalf of the county when necessary to secure the county from loss as provided by section 569.2.

75. 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.

89 Acts, ch 197, §30 HF 343  
Subsection 40 amended

### **331.805 Prohibited actions—cremation permit—penalties.**

1. When a death occurs in the manner specified in section 331.802, subsection 3, the body shall not be disturbed or removed from the position in which it is found without authorization from the county medical examiner or the state medical examiner except for the purpose of preserving the body from loss or destruction or permitting the passage of traffic on a highway, railroad or airport, or unless the failure to immediately remove the body might endanger life, safety, or health. A person who moves, disturbs, or conceals a body in violation of this subsection or chapter 691 is guilty of a simple misdemeanor.

2. It is unlawful to embalm a body when the embalmer has reason to believe death occurred in a manner specified in section 331.802, subsection 3, when there is evidence sufficient to arouse suspicion of crime in connection with the cause of death of the deceased, or where it is the duty of a medical examiner to view the body and investigate the death of the deceased person, until the permission of a county medical examiner has been obtained. When feasible, the body shall be released to the funeral director for embalming within twenty-four hours of death.

3. *a.* It is unlawful to cremate, bury, or send out of the state the body of a deceased person when death occurred in a manner specified in section 331.802, subsection 3, until a medical examiner certifies in writing that the examiner has viewed the body, has made personal inquiry into the cause and manner of death, and all necessary autopsy or postmortem examinations have been completed. However, the body of a deceased person may be sent out of state for the purpose of an autopsy or postmortem examination if the county medical examiner certifies in writing that the out-of-state autopsy or postmortem examination is necessary or, in the case of a death which is not of public interest as specified in section 331.802, subsection 3, if the attending physician certifies to the county medical examiner that the performance of the autopsy out of state is proper.

*b.* If the next of kin, guardian, or other person authorized to act on behalf of a deceased person has requested that the body of the deceased person be cremated, a permit for cremation must be obtained from a medical examiner. However, a permit is not required if the deceased person was a member of an established religion whose tenets are opposed to the inspection or examination of the body of a deceased person. Cremation permits by the medical examiner must be made on the most current forms prepared at the direction of and approved by the state medical examiner, with copies forwarded to the state medical examiner's office. Costs for the cremation permit issued by a medical examiner shall not exceed twenty-five dollars. The costs shall be borne by the family, next of kin, guardian of the decedent, or other person.

4. A person who violates a provision of subsection 2 or 3 is guilty of a serious misdemeanor.

89 Acts, ch 81, §1 SF 216  
Subsection 3 amended

## CHAPTER 341A

### CIVIL SERVICE FOR DEPUTY COUNTY SHERIFFS

#### 341A.5 Organization.

The commission shall hold an organizational meeting immediately after its establishment and shall elect one of its members as chairperson. The commission shall hold regular meetings at least once annually, and may hold additional meetings as may be required in the fulfillment of its responsibilities. All commission meetings shall be public meetings.

The commission shall appoint a personnel director who shall act as its secretary and such other personnel as may be necessary. The personnel director shall keep and preserve all records of the commission, including reports submitted to it and examinations held under its direction, advise the commission in all matters pertaining to the civil service system, and perform such other duties as the commission may prescribe. The commission may add the personnel director's duties to a presently employed county employee.

89 Acts, ch 187, §1 HF 573  
Unnumbered paragraph 1 amended

## CHAPTER 347

### PUBLIC HOSPITALS

#### 347.7 Tax levies.

If a county hospital is established, the board of supervisors, at the time of levying ordinary taxes, shall levy a tax at the rate voted not to exceed fifty-four

cents per thousand dollars of assessed value in any one year for the erection and equipment of the hospital, and also a tax not to exceed twenty-seven cents per thousand dollars of value for the improvement, maintenance, and replacements of the hospital, as certified by the board of hospital trustees. However, in counties having a population of two hundred twenty-five thousand or over, the levy for improvements and maintenance of the hospital shall not exceed one dollar and thirty-five cents per thousand dollars of assessed value in any one year. The proceeds of the taxes constitute the county public hospital fund and the fund is subject to review by the board of supervisors in counties over two hundred twenty-five thousand. However, the board of trustees of a county hospital, where funds are available in the county public hospital fund of the county which are unappropriated, may use the unappropriated funds for erecting and equipping hospital buildings and additions thereto without authority from the voters of the county.

No levy shall be made for the improvement, maintenance, or replacements of the hospital until the hospital has been constructed, staffed, and receiving patients. If revenue bonds are issued and outstanding under section 331.461, subsection 1, paragraph "d", the board may levy a tax to pay operating and maintenance expenses in lieu of the authority otherwise contained in this section not to exceed twenty-seven cents per thousand dollars of assessed value or not to exceed one dollar and twenty-one and one-half cents per thousand dollars of assessed value for improvements and maintenance of the hospital in counties having a population of two hundred twenty-five thousand or over.

In addition to levies otherwise authorized by this section, the board of supervisors may levy a tax at the rate, not to exceed twenty-seven cents per thousand dollars of assessed value, necessary to raise the amount budgeted by the board of hospital trustees for support of ambulance service as authorized in section 347.14, subsection 13.

The tax levy authorized by this section for operation and maintenance of the hospital may be available in whole or in part to any county with or without a county hospital organized under this chapter, to be used to enhance rural health services in the county. However, the tax levied may be expended for enhancement of rural health care services only following a local planning process. The Iowa department of public health shall establish guidelines to be followed by counties in implementing the local planning process which shall require legal notice, public hearings, and a referendum in accordance with sections 347.7 and 347.30 prior to the authorization of any new levy or a change in the use of a levy. Enhancement of rural health services for which the tax levy pursuant to this section may be used includes but is not limited to emergency medical services, health care services shared with other hospitals, rural health clinics, and support for rural health care practitioners and public health services. When alternative use of funds from the tax levy authorized by this section is proposed in a county with a county hospital organized under this chapter, use of the funds shall be agreed upon by the elected board of trustees of the county hospital. When alternative use of funds from the tax levy authorized by this section is proposed in a county without a county hospital organized under this chapter, use of the funds shall be agreed upon by the board of supervisors and any publicly elected hospital board of trustees within the county prior to submission of the question to the voters. Moneys raised from a tax levied in accordance with this paragraph shall be designated and administered by the board of supervisors in a manner consistent with the purposes of the levy.

## CHAPTER 349

### OFFICIAL NEWSPAPERS

#### 349.17 Official publication fee.

The cost of official publications provided for in section 349.16 shall not exceed the fee provided in section 618.11 for the publication of legal notices. An official publication shall not be printed in type smaller than six point.

89 Acts, ch 214, §2 HF 728  
Section amended

## CHAPTER 356

### JAILS AND MUNICIPAL HOLDING FACILITIES

#### 356.49 Jail report.

A county sheriff shall file, on a monthly basis, a written report with the director of the department of corrections. The report shall include, but not be restricted to, the total number of men, women, and juveniles held in the jail for the reporting month. The director shall adopt and provide a uniform reporting form to be utilized by county sheriffs.

89 Acts, ch 159, §1 SF 391  
NEW section

## CHAPTER 357B

### BENEFITED FIRE DISTRICTS

#### 357B.5 Dissolution of district.

1. Upon petition of a number of registered voters residing in a district at least equal to thirty-five percent of the property taxpayers in the district, the board of supervisors may dissolve a benefited fire district and dispose of any remaining property, the proceeds of which shall first be applied against any outstanding obligation of the district. Any remaining balance shall be applied as a tax credit for the property owners of the district. The board of supervisors shall continue to levy an annual tax after the dissolution of a district, not to exceed forty and one-half cents per thousand dollars of assessed value of the taxable property of the district, until all outstanding obligations of the district are paid.

2. If a benefited fire district is dissolved that has been providing fire protection by contract, direct levy, or combination of both, to a city within the district for at least twenty years and the city's annual payments by contract or levy for the fire protection comprise seventy-five percent or more of the district's annual budget, the board of supervisors, in lieu of the disposal of property as provided in subsection 1, shall transfer to the city all of the district's real and personal property. The city shall assume all of the outstanding obligations of the district. If the district provides fire protection outside of the city's boundaries, the city shall continue to provide fire protection to this area until it is assigned to another fire protection district by the board of supervisors. If the city continues the fire protection outside its boundaries, the city shall certify to the board of supervisors the cost of providing this service, which shall be at the same rate as contained in the budget for property within the city, but not exceeding forty and one-half cents per thousand dollars of assessed value of all taxable property in the area. The board of supervisors shall levy the amount of tax certified as provided in section 357B.3. The tax shall be collected and allocated in the same manner as other property taxes and paid to the city.

89 Acts, ch 255, §1 HF 776  
Section amended

**357B.8 Fire district including a city—budget payment or separate levy.**

1. A city that was part of a benefited fire district prior to the city's incorporation may continue to receive fire protection from the district under a contract or direct levy by the district. The annual amount paid by the city to the benefited fire district shall be included in the city's annual budget and shall be a part of the city's general fund tax levy.

2. In lieu of subsection 1, a benefited fire district that includes a city within the boundaries of the fire district may certify an annual tax levy not exceeding forty and one-half cents per thousand dollars of assessed valuation of the taxable property within the city for the purpose of fire protection. The benefited fire district shall certify the tax levy as provided in this subsection only after agreement granted by resolution of the city council. The amount of the tax rate levied under this subsection shall reduce by an equal amount the maximum tax levy authorized for the general fund of that city under section 384.1. If the district levies directly against property within a city to provide fire protection for that city, the city shall not be responsible for providing fire protection as provided in section 364.16, and shall have no liability for the method, manner, or means in which the district provides the fire protection.

89 Acts, ch 255, §2 HF 776  
NEW section

**357B.9 to 357B.17** Repealed by 66GA, ch 194, §12.

## CHAPTER 357E

### BENEFITED RECREATIONAL LAKE DISTRICTS

**357E.3 Petition for public hearing.**

1. The supervisors shall, on the petition of twenty-five percent of the property owners of a proposed district if the assessed valuation of the property owned by the petitioners represents at least twenty-five percent of the total assessed value of the proposed district, hold a public hearing concerning the establishment of a proposed district. The petition shall include a statement containing the following information:

- a. The need for the district.
- b. A description of the district to be served.
- c. The approximate number of families in the district.

2. The board of supervisors may require a bond of the petitioners conditioned for the payment of all costs and expenses incurred in the proceedings in case the district is not established.

89 Acts, ch 53, §1 HF 319  
Subsection 1, unnumbered paragraph 1 amended

## CHAPTER 358A

### COUNTY ZONING COMMISSION

**358A.10 Board of adjustment—review and remand.**

The board of supervisors shall provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this chapter shall provide that the said board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinances or regulations in harmony with its general purpose and intent and in accordance with the general or specific rules

therein contained, and provide that any property owner aggrieved by the action of the board of supervisors in the adoption of such regulations and restrictions may petition the said board of adjustment direct to modify regulations and restrictions as applied to such property owners.

The board of supervisors may provide for its review of variances granted by the board of adjustment before their effective date. The board of supervisors may remand a decision to grant a variance to the board of adjustment for further study. If remanded, the effective date of the variance is delayed for thirty days from the date of the remand.

89 Acts, ch 55, §1 HF 420  
NEW unnumbered paragraph 2

## CHAPTER 359

### TOWNSHIPS AND TOWNSHIP OFFICERS

#### 359.8 Division—effect.

If the petition is signed by a majority of the eligible electors of the township residing without the corporate limits of such city, the board of supervisors shall divide the township into two townships, as petitioned; but, except for election purposes, including the appointment of election officers rendered necessary by the change, the division shall not take effect until the first day of January following the next general election which is not a Sunday or a legal holiday.

89 Acts, ch 83, §49 SF 112  
Section amended

#### 359.43 Tax levy—supplemental levy—districts.

1. The township trustees may levy an annual tax not exceeding forty and one-half cents per thousand dollars of assessed value of the taxable property in the township, excluding property within a benefited fire district or within the corporate limits of a city, for the purpose of exercising the powers and duties specified in section 359.42. However, in a township having a fire protection service or ambulance service agreement or both service agreements with a special charter city having a paid fire department, the township trustees may levy an annual tax not exceeding fifty-four cents per thousand dollars of the assessed value of the taxable property for the services authorized or required under section 359.42 and in a township which is located within a county having a population of three hundred thousand or more, the township trustees may levy an annual tax not exceeding sixty-seven and one-half cents per thousand dollars of assessed value of taxable property for the services authorized or required under section 359.42.

2. If the levy authorized under subsection 1 is insufficient to provide the services authorized or required under section 359.42, the township trustees may levy an additional annual tax not exceeding twenty and one-fourth cents per thousand dollars of assessed value of the taxable property in the township, excluding any property within the corporate limits of a city, to provide the services.

3. The township trustees may divide the township into tax districts for the purpose of providing the services authorized or required under section 359.42 and may levy a different tax rate in each district, but the tax levied in a tax district for the authorized or required services shall not exceed the tax levy limitations for that township as provided in this section.

4. Of the levies authorized under subsections 1 and 2, the township trustees may credit to a reserve account annually an amount not to exceed ten cents per thousand dollars of the assessed value of the taxable property in the township for

the purchase or replacement of supplies and equipment required to carry out the services specified under section 359.42. Notwithstanding section 453.7, interest earned on moneys credited to the reserve account shall be credited to the reserve account.

89 Acts, ch 149, §1 HF 581  
NEW subsection 4

## CHAPTER 362

### DEFINITIONS AND MISCELLANEOUS PROVISIONS

#### 362.4 Petition of eligible electors.

If a petition of the voters is authorized by the city code, the petition is valid if signed by eligible electors of the city equal in number to ten percent of the persons who voted at the last preceding regular city election, but not less than ten persons, unless otherwise provided by state law. The petition shall include the signatures of the petitioners, a statement of their place of residence, and the date on which they signed the petition.

89 Acts, ch 136, §70 SF 371  
Section amended

## CHAPTER 364

### POWERS AND DUTIES OF CITIES

#### 364.5 Joint action—league of municipalities.

A city or a board established to administer a city utility, in the exercise of any of its powers, may act jointly with any public or private agency as provided in chapter 28E.

The financial condition and the transactions of the league of Iowa municipalities shall be audited in the same manner as cities as provided in section 11.6.

It is unlawful for the league of Iowa municipalities to provide any form of aid to a political party or to the campaign of a candidate for political or public office. Any person violating or being an accessory to a violation of this section is guilty of a simple misdemeanor.

A city may enter into an agreement with the federal government acting through any of its authorized agencies, and may carry out provisions of the agreement as necessary to meet federal requirements to obtain the funds or co-operation of the federal government or its agencies for the planning, construction, rehabilitation, or extension of a public improvement.

89 Acts, ch 264, §8 HF 451  
Unnumbered paragraph 2 amended

#### 364.12 Responsibility for public places.

1. As used in this section, "property owner" means the contract purchaser if there is one of record, otherwise the record holder of legal title.

2. A city shall keep all public grounds, streets, sidewalks, alleys, bridges, culverts, overpasses, underpasses, grade crossing separations and approaches, public ways, squares, and commons open, in repair, and free from nuisance, with the following exceptions:

a. Public ways and grounds may be temporarily closed by resolution. Following notice as provided in section 362.3, public ways and grounds may be vacated by ordinance.

b. The abutting property owner is responsible for the removal of the natural accumulations of snow and ice from the sidewalks within a reasonable amount of

time and may be liable for damages caused by the failure of the abutting property owner to use reasonable care in the removal of the snow or ice. If damages are to be awarded under this section against the abutting property owner, the claimant has the burden of proving the amount of the damages. To authorize recovery of more than a nominal amount, facts must exist and be shown by the evidence which afford a reasonable basis for measuring the amount of the claimant's actual damages, and the amount of actual damages shall not be determined by speculation, conjecture, or surmise. All legal or equitable defenses are available to the abutting property owner in an action brought pursuant to this paragraph. The city's general duty under this subsection does not include a duty to remove natural accumulations of snow or ice from the sidewalks. However, when the city is the abutting property owner it has the specific duty of the abutting property owner set forth in this paragraph.

c. The abutting property owner may be required by ordinance to maintain all property outside the lot and property lines and inside the curb lines upon the public streets, except that the property owner shall not be required to remove diseased trees or dead wood on the publicly owned property or right of way.

d. A city may serve notice on the abutting property owner, by certified mail to the property owner as shown by the records of the county auditor, requiring the abutting property owner to repair, replace, or reconstruct sidewalks.

e. If the abutting property owner does not perform an action required under this subsection within a reasonable time, a city may perform the required action and assess the costs against the abutting property for collection in the same manner as a property tax. This power does not relieve the abutting property owner of liability imposed under paragraph "b".

f. A city has no duty under this subsection with respect to property that is required by law to be maintained by a railway company.

3. A city may:

a. Require the abatement of a nuisance, public or private, in any reasonable manner.

b. Require the removal of diseased trees or dead wood, except as stated in subsection 2, paragraph "c" of this section.

c. Require the removal, repair, or dismantling of a dangerous building or structure.

d. Require the numbering of buildings.

e. Require connection to public drainage systems from abutting property when necessary for public health or safety.

f. Require connection to public sewer systems from abutting property, and require installation of sanitary toilet facilities and removal of other toilet facilities on such property.

g. Require the cutting or destruction of weeds or other growth which constitutes a health, safety, or fire hazard.

h. If the property owner does not perform an action required under this subsection within a reasonable time after notice, a city may perform the required action and assess the costs against the property for collection in the same manner as a property tax. Notice may be in the form of an ordinance or by certified mail to the property owner as shown by the records of the county auditor, and shall state the time within which action is required. However, in an emergency a city may perform any action which may be required under this section without prior notice, and assess the costs as provided in this subsection, after notice to the property owner and hearing.

4. In addition to any other remedy provided by law, a city may also seek reimbursement for costs incurred in performing any act authorized by this section by a civil action for damages against a property owner. However, a city shall not seek reimbursement for costs incurred in performing an act if the same act has not

been performed by the city on adjoining city-owned property. For the purposes of this subsection, a county acquiring property for delinquent taxes shall not be considered a property owner.

89 Acts, ch 261, §1 SF 366  
NEW subsection 4

### **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 as provided in rule of civil procedure 56.1, by certified mail addressed to the defendant at the defendant's last known mailing address, return receipt requested, or by publication in the manner as provided in rule of civil procedure 60 and subject to the conditions of rule of civil procedure 60.1. 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 municipal infraction proceedings:

- a. The matter shall be tried before a magistrate or district associate judge in the same manner as a small claim.

- b. 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.

- c. 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.

- d. The defendant may be represented by counsel of the defendant's own selection and at the defendant's own expense.

- e. The defendant may answer by admitting or denying the infraction.
- f. 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 do any of the following:

a. Impose a civil penalty by entry of a personal judgment against the defendant.

b. Direct that payment of the civil penalty be suspended or deferred under conditions imposed by the court.

c. Grant appropriate alternative relief ordering the defendant to abate or cease the violation.

d. Authorize the city to abate or correct the violation.

e. Order that the city's costs for abatement or correction of the violation be entered as a personal judgment against the defendant or assessed against the property where the violation occurred, or both.

If a defendant willfully violates the terms of an order imposed by the court, the failure is contempt.

The magistrate or district associate judge shall have jurisdiction to assess or enter judgment for costs of abatement or correction in an amount not to exceed the jurisdictional amount for a money judgment in a civil action pursuant to section 631.1, subsection 1, for magistrates and section 602.6306, subsection 2, for district associate judges. If the city seeks abatement or correction costs in excess of those amounts, the case shall be referred to the district court for hearing and entry of an appropriate order. The procedure for hearing in the district court shall be the same procedure as that for a small claims appeal pursuant to section 631.13.

10. The defendant or the city may file a motion for a new trial or may appeal the decision of the magistrate or district associate judge to the district court. The procedure on appeal shall be the same as for a small claim pursuant to section 631.13. A factual determination made by the trial court, supported by substantial evidence as shown in the record, is binding for purposes of appeal relating to the violation at issue, but shall not be admissible or binding as to any future violation for the same or similar ordinance provision by the same defendant.

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 malicious prosecution.

89 Acts, ch 150, §5-8 HF 596  
 Subsection 4, unnumbered paragraph 1 amended  
 Subsection 5, unnumbered paragraph 1 amended  
 Subsection 5, NEW paragraph a  
 Subsections 9, 10 and 12 amended

### **364.23 Energy efficient lighting required.**

All city-owned exterior flood lighting, including but not limited to, street and security lighting, shall be replaced when worn-out exclusively with high pressure sodium lighting or lighting with equivalent or better energy efficiency as approved in rules adopted by the utilities board within the utilities division of the department of commerce.

89 Acts, ch 297, §6 SF 419  
 NEW section

### 364.24 Traffic light synchronization.

After July 1, 1992, all cities with more than three traffic lights within the corporate limits shall establish a traffic light synchronization program for energy efficiency in accordance with rules adopted by the state department of transportation. The state department of transportation shall adopt rules required by this section by July 1, 1990.

89 Acts, ch 297, §7 SF 419  
NEW section

## CHAPTER 368

### CITY DEVELOPMENT

#### 368.1 Definitions.

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

1. "*Adjoining*" means having a common boundary for not less than fifty feet. Land areas may be adjoining although separated by a roadway or waterway.
2. "*Annexation*" means the addition of territory to a city.
3. "*Board*" means the city development board established in section 368.9.
4. "*Boundary adjustment*" means annexation, severance or consolidation.
5. "*City development*" means an incorporation, discontinuance or boundary adjustment.
6. "*Committee*" means the board members, and the local representatives appointed as provided in section 368.14, to hear and make a decision on a petition or plan for city development.
7. "*Consolidation*" means the combining of two or more cities into one city.
8. "*Discontinuance*" means termination of a city.
9. "*Incorporation*" means establishment of a new city.
10. "*Qualified elector*" means a person who is registered to vote pursuant to chapter 48.
11. "*Severance*" means the deletion of territory from a city.
12. "*Territory*" means the land area or areas proposed to be incorporated, annexed, or severed, whether or not contiguous to all other areas proposed to be incorporated, annexed, or severed. Except as provided for by an agreement pursuant to chapter 28E, "*territory*" having a common boundary with the right-of-way of a secondary road extends to the center line of the road.
13. "*Urbanized area*" means the land area within three miles of the boundaries of a city of fifteen thousand or more population.

89 Acts, ch 98, §1 SF 300; 89 Acts, ch 299, §1 HF 313

Amendment to subsection 12 applies to actions taken pursuant to this chapter which commence after July 1, 1989; 89 Acts, ch 98, §3 SF 300

Subsections renumbered to alphabetize and subsections 1 and 12 amended

#### 368.5 Annexing state property.

Territory owned by the state of Iowa may be annexed, but the attorney general must be served with notice of the hearing and a copy of the proposal.

Territory within the road right-of-way owned by a county may be annexed, but the county attorney of that county must be served with notice of the hearing and a copy of the proposal.

89 Acts, ch 98, §2 SF 300

Amendment adding second paragraph applies to actions taken pursuant to this chapter which commence after July 1, 1989; 89 Acts, ch 98, §3 SF 300

NEW unnumbered paragraph 2

#### 368.7 Voluntary annexation of territory.

All of the owners of land in a territory adjoining a city may apply in writing to the council of the adjoining city requesting annexation of the territory. Territory

comprising railway right of way may be included in the application without the consent of the railway if a copy of the application is mailed by certified mail to the owner of the right of way, at least ten days prior to the filing of the application with the city council. The application must contain a map of the territory showing its location in relationship to the city.

An application for annexation of territory not within the urbanized area of a city other than the city to which the annexation is directed must be approved by resolution of the council which receives the application. In the discretion of a city council, the resolution may include a provision for a transition for the imposition of taxes as provided in section 368.11, subsection 13. Upon receiving approval of the council, the city clerk shall file a copy of the resolution, map, and legal description of the territory involved with the state department of transportation. The city clerk shall also file a copy of the map and resolution with the county recorder and secretary of state. The annexation is completed upon acknowledgment by the secretary of state that the secretary of state has received the map and resolution.

An application for annexation of territory within the urbanized area of a city other than the city to which the annexation is directed must be approved both by resolution of the council which receives the application and by the board. In the discretion of a city council, the resolution may include a provision for a transition for the imposition of taxes as provided in section 368.11, subsection 13. The annexation is completed when the board has filed copies of applicable portions of the proceedings as required by section 368.20, subsection 2.

89 Acts, ch 299, §2 HF 313  
Unnumbered paragraphs 2 and 3 amended

### **368.11 Petition for involuntary city development action.**

A petition for incorporation, discontinuance, or boundary adjustment may be filed with the board by a city council, a county board of supervisors, a regional planning authority, or five percent of the qualified electors of a city or territory involved in the proposal. Notice of the filing, including a copy of the petition, must be served upon the council of each city for which a discontinuance or boundary adjustment is proposed, the board of supervisors for each county which contains a portion of a city to be discontinued or territory to be incorporated, annexed or severed, and any regional planning authority for the area involved.

Within ninety days of receipt of a petition, the board shall initiate appropriate proceedings or dismiss the petition. The board may combine for consideration petitions or plans which concern the same territory or city.

The petition must include substantially the following information as applicable:

1. A general statement of the proposal.
2. A map of the territory, city or cities involved.
3. Assessed valuation of platted and unplatted land.
4. Names of property owners.
5. Population density.
6. Description of topography.
7. Plans for disposal of assets and assumption of liabilities.
8. Description of existing municipal services, including but not limited to water supply, sewage disposal, and fire and police protection.
9. Plans for agreements with any existing special service districts.
10. In a case of annexation or incorporation, the petition must state that none of the territory is within a city.
11. In a case of incorporation or consolidation, the petition must state the name of the proposed city.
12. Plans shall include a formal agreement between affected municipal corporations and counties for the maintenance, improvement and traffic control of any shared roads involved in an incorporation or boundary adjustment.

13. In the discretion of a city council, a provision for a transition for the imposition of city taxes against property within an annexation area. The provision shall not allow a greater exemption from taxation than the tax exemption formula schedule provided under section 427B.3, paragraphs "a" through "e", and shall be applied in the levy and collection of taxes. The provision may also allow for the partial provision of city services during the time in which the exemption from taxation is in effect.

89 Acts, ch 299, §3 HF 313  
NEW subsection 13

### **368.20 Procedure after approval.**

After the county commissioner of elections has certified the results to the board, the board shall:

1. Serve and publish notice of the result as provided in section 362.3.
2. File with the secretary of state, the clerk of each city incorporated or involved in a boundary adjustment, and with the recorder of each county which contains a portion of any city or territory involved, copies of the proceedings including the original petition or plan and any amendments, the order of the board approving the petition or plan, proofs of service and publication of required notices, certification of the election result, and any other material deemed by the board to be of primary importance to the proceedings. Upon proper filing and expiration of time for appeal, the incorporation, discontinuance, or boundary adjustment is complete. However, if an appeal to any of the proceedings is pending, completion does not occur until the appeal is decided, unless a subsequent date is provided in the proposal. The board shall also file with the state department of transportation a copy of the map and legal land description of each completed incorporation or corporate boundary adjustment completed under sections 368.11 through 368.22 or approved annexation within an urbanized area.

89 Acts, ch 22, §1 HF 404  
1989 amendment to subsection 2 effective March 28, 1989; 89 Acts, ch 22, §2 HF 404  
Subsection 2 amended

## **CHAPTER 372**

### **ORGANIZATION OF CITY GOVERNMENT**

#### **372.2 Six-year limitation.**

A city may adopt a different form of government not oftener than once in a six-year period. A different form, other than a home rule charter or special charter, must be adopted as follows:

1. Eligible electors of the city, equal in number to at least twenty-five percent of the persons who voted at the last regular city election, may petition the council to submit to the electors the question of adopting a different form of city government.
2. Within fifteen days after receiving a valid petition, the council shall proclaim a special city election to be held within sixty days to determine whether the city shall change to a different form of government. The council shall notify the county commissioner of elections to publish notice of the election and conduct the election pursuant to chapters 39 to 53. The county commissioner of elections shall certify the results of the election to the council.
3. If a majority of the persons voting at the special election approves the proposed form, it is adopted.
4. If a majority of the persons voting at the special election does not approve the proposed form, that form may not be resubmitted to the voters within the next four years.
5. If the proposed form is adopted:

a. The elective officers provided for in the adopted form are to be elected at the next regular city election held more than sixty days after the special election at which the form was adopted, and the adopted form becomes effective at the beginning of the new term following the regular city election.

b. The change of form does not alter any right or liability of the city in effect when the new form takes effect.

c. All departments and agencies shall continue to operate until replaced.

d. All measures in effect remain effective until amended or repealed, unless they are irreconcilable with the adopted form.

e. Upon the effective date of the adopted form, the city shall adopt by ordinance a new charter embodying the adopted form, and shall file a copy of its charter with the secretary of state, and maintain copies available for public inspection.

89 Acts, ch 39, §6, 7 SF 500

Subsections 1 and 2 amended

Subsection 5, paragraph b amended

### **372.9 Home rule charter procedure.**

A city to be governed by the home rule charter form shall adopt a home rule charter in which its form of government is set forth. A city may adopt a home rule charter only by the following procedures:

1. A home rule charter may be proposed by:

a. The council, causing a charter to be prepared and filed and by resolution submitting it to the voters.

b. Eligible electors of the city equal in number to at least twenty-five percent of the persons who voted at the last regular city election petitioning the council to appoint a charter commission to prepare a proposed charter. The council shall, within thirty days of the filing of a valid petition, appoint a charter commission composed of not less than five nor more than fifteen members. The charter commission shall, within six months of its appointment, prepare and file with the council a proposed charter.

2. When a charter is filed, the council and mayor shall notify the county commissioner of elections to publish notice and conduct the election. The notice shall be published at least twice in the manner provided in section 362.3, except that the publications must occur within sixty days of the filing of the home rule charter, with a two-week interval between each publication. The council shall provide copies of a proposed charter for public distribution by the city clerk.

3. The proposed home rule charter must be submitted at a special city election on a date selected by the mayor and council in accordance with section 47.6. However, the date of the election must be not less than thirty nor more than sixty days after the last publication of the proposed home rule charter.

4. If a proposed home rule charter is rejected by the voters, it may not be resubmitted in substantially the same form to the voters within the next four years. If a proposed home rule charter is adopted by the voters, no other form of government may be submitted to the voters for six years.

5. If a petition for the appointment of a charter commission is filed at any time within two weeks after the second publication of a charter proposed by the council, the submission to the voters of a charter proposed by the council must be delayed, a charter commission appointed, and the council proposal and the charter proposed by the charter commission must be submitted to the voters at the same special election.

6. The ballot submitting a proposed charter or charters must also submit the existing form of government as an alternative.

7. If only two forms of government are being voted upon, the form of government which receives the highest number of votes is adopted.

If more than two forms are being voted upon and no form receives a majority of the votes cast in the special election, there must be a runoff election between the

two proposed forms which receive the highest number of votes in the special election. The runoff election must be held within thirty days following the special election and must be conducted in the same manner as a special city election.

8. If a home rule charter is adopted:

a. The elective officers provided for in the charter are to be elected at the next regular city election held more than sixty days after the special election at which the charter was adopted, and the adopted charter becomes effective at the beginning of the new term following the regular city election.

b. The adoption of the charter does not alter any right or liability of the city in effect at the time of the special election at which the charter was adopted.

c. All departments and agencies shall continue to operate until replaced.

d. All measures in effect remain effective until amended or repealed, unless they are irreconcilable with the charter.

e. Upon the effective date of the home rule charter, the city shall adopt by ordinance the home rule charter, and shall file a copy of its charter with the secretary of state, and maintain copies available for public inspection.

89 Acts, ch 39, §8 SF 500  
Subsection 3 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, an appointment to fill the vacancy is temporary and the council shall call a special election to fill the vacancy permanently, under paragraph "b". The number of signatures of eligible electors of a city for a valid petition shall be determined as follows:

(1) For a city with a population of ten thousand or less, at least two hundred signatures or at least the number of signatures equal to fifteen percent of the voters who voted for candidates for the office at the preceding regular election at which the office was on the ballot, whichever number is fewer.

(2) For a city with a population of more than ten thousand but not more than fifty thousand, at least one thousand signatures or at least the number of signatures equal to fifteen percent of the voters who voted for candidates for the office at the preceding regular election at which the office was on the ballot, whichever number is fewer.

(3) For a city with a population of more than fifty thousand, at least two thousand signatures or at least the number of signatures equal to ten percent of the voters who voted for candidates for the office at the preceding regular election at which the office was on the ballot, whichever number is fewer.

(4) The minimum number of signatures for a valid petition pursuant to subparagraphs (1) through (3) shall not be fewer than ten.

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. The council shall give the county commissioner at least sixty days' written notice of the date chosen for the special election. 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. However, ordinances, resolutions, council proceedings, and records and documents relating to real property transactions or bond issues or accurate reproductions of those 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 does not become effective during the term in which the change is adopted, and the council shall not adopt an ordinance changing the compensation of the mayor, council members, or other elected officers during the months of November and December in the year of a regular city election. A change in the compensation of council members becomes 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 is not entitled to 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 the compensation 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.

89 Acts, ch 39, §9 SF 500; 89 Acts, ch 136, §71 SF 371  
 Subsection 2, paragraph b amended  
 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-one 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. A person may sign nomination petitions for more than one candidate for the same office, and the signature is not invalid solely because the person signed nomination petitions for one or more other candidates for the office. 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.

If the city clerk is not readily available during normal office hours, the city clerk shall designate other employees or officials of the city who are ordinarily available to accept nomination papers under this section. 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 note upon each petition and affidavit accepted for filing the date and time that the petition was filed.

The city clerk shall deliver all nomination petitions together with the text of any public measure being submitted by the city council to the electorate 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. Objections to the legal sufficiency of petitions shall be filed in accordance with the provisions of sections 44.4, 44.5, and 44.8.

89 Acts, ch 136, §72 SF 371  
Unnumbered paragraph 1 amended

## CHAPTER 380

### CITY LEGISLATION

#### 380.6 Effective date.

Measures passed by the council, other than motions, become effective in one of the following ways:

1. If the mayor signs the measure, a resolution becomes effective immediately upon signing and an ordinance or amendment becomes a law when published, unless a subsequent effective date is provided within the measure.

2. If the mayor vetoes the measure, the mayor shall explain the reasons for the veto in a written message to the council at the time of the veto. Within thirty days after the mayor's veto, the council may pass the measure again by a vote of not less than two-thirds of the council members. If the mayor vetoes a measure and the council repasses the measure after the mayor's veto, a resolution becomes effective immediately upon repassage, and an ordinance or amendment becomes a law when published, unless a subsequent effective date is provided within the measure.

3. If the mayor takes no action on the measure, a resolution becomes effective fourteen days after the date of passage and an ordinance or amendment becomes a law when published, but not sooner than fourteen days after the date of passage, unless a subsequent effective date is provided within the measure.

89 Acts, ch 39, §10 SF 500  
Subsection 2 amended

## CHAPTER 384

### CITY FINANCE

#### 384.1 Taxes certified.

A city may certify taxes to be levied by the county on all taxable property within the city limits, for all city government purposes. However, the tax levied by a city on tracts of land and improvements thereon used and assessed for agricultural or horticultural purposes, shall not exceed three dollars and three-eighths cents per thousand dollars of assessed value in any year. Improvements located on such tracts of land and not used for agricultural or horticultural purposes and all residential dwellings are subject to the same rate of tax levied by the city on all other taxable property within the city. A city's tax levy for the general fund shall not exceed eight dollars and ten cents per thousand dollars of taxable value in any tax year, except for the levies authorized in section 384.12.

89 Acts, ch 296, §39 SF 141  
Section amended

#### 384.12 Additional taxes.

A city may certify, for the general fund levy, taxes which are not subject to the limit provided in section 384.1, and which are in addition to any other moneys the city may wish to spend for such purposes, as follows:

1. A tax not to exceed thirteen and one-half cents per thousand dollars of assessed value for the support of instrumental or vocal musical groups, one or more organizations which have tax-exempt status under section 501(c)(3) of the

Internal Revenue Code and are organized and operated exclusively for artistic and cultural purposes, or any of these purposes, subject to the following:

a. Upon receipt of a petition valid under the provisions of section 362.4, the council shall submit to the voters at the next regular city election the question of whether a tax shall be levied.

b. If a majority approves the levy, it may be imposed.

c. The levy can be eliminated by the same procedure of petition and election.

d. A tax authorized by an election held prior to the effective date of the city code may be continued until eliminated by the council, or by petition and election.

2. A tax not to exceed eighty-one cents per thousand dollars of assessed value for development, operation, and maintenance of a memorial building or monument, subject to the provisions of subsection 1.

3. A tax not to exceed thirteen and one-half cents per thousand dollars of assessed value for support of a symphony orchestra, subject to the provisions of subsection 1.

4. A tax not to exceed twenty-seven cents per thousand dollars of assessed value for the operation of cultural and scientific facilities, subject to the provisions of subsection 1, except that the question may be submitted on the council's own motion.

5. A tax to aid in the construction of a county bridge, subject to the provisions of subsection 1, except that the question must be submitted at a special election. The expense of a special election under this subsection must be paid by the county. The notice of the special election must include full details of the proposal, including the location of the proposed bridge, the rate of tax to be levied, and all other conditions.

6. A tax to aid a company incorporated under the laws of this state in the construction of a highway or combination bridge across any navigable boundary river of this state, commencing or terminating in the city and suitable for use as highway, or for both highway and railway purposes. This tax levy is subject to the provisions of subsections 1 and 5. The levy is limited to one dollar and thirty-five cents per thousand dollars of the assessed value of taxable property in the city. The estimated cost of the bridge must be at least ten thousand dollars, and the city aid may not exceed one-half of the estimated cost. The notice of the special election must include the name of the corporation to be aided, and all conditions required of the corporation. Tax moneys received for this purpose may not be paid over by the county treasurer until the city has filed a statement that the corporation has complied with all conditions.

7. If a tax has been voted for aid of a bridge under subsection 6, a further tax may be voted for the purpose of purchasing the bridge, subject to the provisions of subsection 1. The levy under this subsection is limited to three dollars and thirty-seven and one-half cents per thousand dollars of the assessed value of the taxable property in the city, payable in not less than ten annual installments.

8. A tax for the purpose of carrying out the terms of a contract for the use of a bridge by a city situated on a river over which a bridge has been built. The tax may not exceed sixty-seven and one-half cents per thousand dollars of assessed value each year.

9. A tax for aid to a public transportation company, subject to the procedure provided in subsection 1, except the question must be submitted at a special election. The levy is limited to three and three-eighths cents per thousand dollars of assessed value. In addition to any other conditions the following requirements must be met before moneys received for this purpose may be paid over by the county treasurer:

a. The public transportation company shall provide the city with copies of state and federal income tax returns for the five years preceding the year for which payment is contemplated or for such lesser period of time as the company has been in operation.

b. The city shall, in any given year, be authorized to pay over only such sums as will yield not to exceed two percent of the public transportation company's investment as the same is valued in its tax depreciation schedule, provided that corporate profits and losses for the five preceding years or for such lesser period of time as the company has been in operation shall not average in excess of a two percent net return. Taxes levied under this subsection may not be used to subsidize losses incurred prior to the election required by this subsection.

10. A tax for the operation and maintenance of a municipal transit system, and for the creation of a reserve fund for the system, in an amount not to exceed fifty-four cents per thousand dollars of assessed value each year, when the revenues from the transit system are insufficient for such purposes, but proceeds of the tax may not be used to pay interest and principal on bonds issued for the purposes of the transit system.

11. If a city has entered into a lease of a building or complex of buildings to be operated as a civic center, a tax sufficient to pay the installments of rent and for maintenance, insurance and taxes not included in the lease rental payments.

12. A tax not to exceed thirteen and one-half cents per thousand dollars of assessed value each year for operating and maintaining a civic center owned by a city.

13. A tax not to exceed six and three-fourths cents per thousand dollars of assessed value for planning a sanitary disposal project.

14. A tax not to exceed twenty-seven cents per thousand dollars of assessed value each year for an aviation authority as provided in section 330A.15.

15. If a city has joined with the county to form an authority for a joint county-city building, as provided in section 346.27, and has entered into a lease with the authority, a tax sufficient to pay the annual rent payable under the lease.

16. A tax not to exceed six and three-fourths cents per thousand dollars of assessed value each year for a levee improvement fund in special charter cities as provided in section 420.155.

17. A tax not to exceed twenty and one-half cents per thousand dollars of assessed value each year to maintain an institution received by gift or devise, subject to an election as required under subsection 1.

18. A tax to pay the premium costs on tort liability insurance, property insurance, and any other insurance that may be necessary in the operation of the city, the costs of a self-insurance program, the costs of a local government risk pool and amounts payable under any insurance agreements to provide or procure such insurance, self-insurance program, or local government risk pool.

19. A tax that exceeds any tax levy limit within this chapter, provided the question has been submitted at a special levy election and received a simple majority of the votes cast on the proposition to authorize the enumerated levy limit to be exceeded for the proposed budget year.

a. The election may be held as specified herein if notice is given by the city council, not later than February 15, to the county commissioner of elections that the election is to be held.

b. An election under this subsection shall be held on the second Tuesday in March and be conducted by the county commissioner of elections in accordance with the law.

c. The proposition to be submitted shall be substantially in the following form:

Vote for *only one* of the following:

Shall the city of ..... (name of city) levy a tax for the purpose of ..... (state purpose of levy election) at a rate of ..... (rate) which will provide \$..... (amount)?

Shall the city of ..... continue under the maximum rate of ..... providing \$..... (amount)?

d. The commissioner of elections conducting the election shall notify the city officials and other county auditors where applicable, of the results within two days of the canvass which shall be held beginning at one o'clock on the second day following the special levy election.

e. Notice of the election shall be published twice in accordance with the provisions of section 362.3, except that the first such notice shall be given at least two weeks before the election.

f. The cost of the election shall be borne by the city.

g. The election provisions of this subsection shall supersede other provisions for elections only to the extent necessary to comply with the provisions hereof.

h. The provisions of this subsection apply to all cities, however organized, including special charter cities which may adopt ordinances where necessary to carry out these provisions.

i. The council shall certify the city's budget with the tax askings not exceeding the amount approved by the special levy election.

20. A tax not to exceed twenty-seven cents per thousand dollars of assessed value for support of a public library, subject to petition and referendum requirements of subsection 1, except that if a majority approves the levy, it shall be imposed.

89 Acts, ch 203, §1 SF 86

Subsection 1, unnumbered paragraph 1 amended

### 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 and the acquiring, developing, and improving of a geographic computer data base system suitable for automated mapping and facilities management.

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 owned or operated by the city, an agency of the city, or a multimember governmental body of which the city is a participating member.

o. 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.

89 Acts, ch 182, §10 HF 551; 89 Acts, ch 189, §3 HF 675  
Subsection 3, paragraphs j and n amended

#### **384.51 Adoption of resolution.**

The council shall meet as specified in the published notice, and after hearing all objections and endorsements from property owners and other persons having an interest in the matter, and after considering all filed, written objections, may adopt or amend and adopt the proposed resolution of necessity, or may defer action until a subsequent meeting. A resolution of necessity requires for passage the vote of three-fourths of all the members of the council, or, in cities having but three members of the council, the vote of two members, and where a remonstrance has been filed with the clerk, signed by the owners subject to seventy-five percent of the amount of the proposed assessments for the entire public improvement included in the resolution of necessity, a resolution of necessity requires a unanimous vote of the council.

An amendment which extends the boundaries of a district, increases the amount to be assessed against a lot, or adds additional public improvements, is not effective until an amended plat, schedule, and estimate have been prepared and adopted, a notice published and mailed to all affected property owners, and hearing held in the same manner as the original proceedings, or until all affected property owners agree in writing to the change. The adoption of a resolution of necessity is a legislative determination that the improvement is expedient and proper and that property assessed will be specially benefited by the improvement and this determination of the council is conclusive. Ownership of property to be assessed by an improvement does not, except for fraud or bad faith, disqualify a council member from voting on any measure.

After adopting the resolution of necessity, the clerk shall certify to the county treasurer of each county in which the assessed property is located, a copy of the resolution of necessity, the plat, and the schedule of assessments. In counties in which taxes are collected in two or more places, the resolution of necessity, the plat, and the schedule of assessments shall be certified to the office of county treasurer where the special assessments are collected. The county treasurer shall preserve the resolution, plat, and schedule as a part of the records of the office until the city certifies the final assessment schedule as provided in section 384.60 or certifies that the public improvement has been abandoned.

89 Acts, ch 39, §11 SF 500  
Unnumbered paragraph 3 amended

## **CHAPTER 386**

### **SELF-SUPPORTED MUNICIPAL IMPROVEMENT DISTRICTS**

#### **386.7 Self-liquidating improvements.**

When a city proposes to construct a self-liquidating improvement, the cost of which is to be paid or financed under the provisions of this chapter, it must do so in accordance with the provisions of this section as follows:

1. Section 386.6, subsections 1 to 5 are applicable to a self-liquidating improvement to the same extent as they are applicable to an improvement and the proceedings initiating a self-liquidating improvement shall be governed thereby.

2. Before the council may order the construction of a self-liquidating improvement, and after hearing thereon, it must find that the self-liquidating improvement and the leasing of a part or the whole of it to any person or governmental body will further the corporate purposes of the city and will:

a. Aid in the commercial development of the district.

b. Further the interests of the district; or

c. Not substantially reduce the city's property tax base.

3. If the council orders the construction of the self-liquidating improvement, contracts for it shall be let in accordance with division VI of chapter 384.

4. The adoption of a resolution ordering the construction of a self-liquidating improvement is a legislative determination that the proposed self-liquidating improvement and the leasing of a part or the whole of it to any person or governmental body will further the corporate purposes of the city and will:

a. Aid in the commercial development of the district.

b. Further the interests of the district; or

c. Not substantially reduce the city's property tax base.

5. A city may lease any or all of a self-liquidating improvement to any person or governmental body.

6. A city may issue revenue bonds payable from the income and receipts derived from the self-liquidated improvement. Chapter 384, division V applies to revenue bonds for self-liquidating improvements and the term "city enterprise" as used in that division shall be deemed to include self-liquidating improvements authorized by this chapter.

7. Any resident or property owner of the city may appeal a decision of the council to order the construction of a self-liquidating improvement or to lease any or all of a self-liquidating improvement to the district court of the county in which any part of the district is located, within thirty days after the adoption of the resolution ordering the self-liquidating improvement, but the action of the council is final and conclusive unless the court finds that the council exceeded its authority.

8. No action may be brought questioning the regularity of the proceedings pertaining to the ordering of the construction of a self-liquidating improvement after thirty days from the date of adoption of the resolution ordering construction of the self-liquidating improvement. No action may be brought questioning the regularity of the proceedings pertaining to the leasing of any or all of a self-liquidating improvement after thirty days from the date of the adoption of a resolution approving the proposed lease. In addition to the limitation contained in section 384.92, no action may be brought which questions the legality of revenue bonds or the power of the city to issue revenue bonds or the effectiveness of any proceedings relating to the authorization and issuance of revenue bonds relating to a self-liquidating improvement after thirty days from the time the bonds are ordered issued by the city.

9. The procedural steps contained in this section may be combined with the procedural steps for the petitioning and creation of the district.

## CHAPTER 400

### CIVIL SERVICE

#### 400.2 Qualifications—conflict of interest.

The commissioners must be citizens of Iowa, eligible electors as defined in chapter 39, and residents of the city preceding their appointment, and shall serve without compensation. A person, while on the commission, shall not hold or be a candidate for any office of public trust. However, when a human rights commission has been established by a city, the director of the commission shall ex officio be a member, without vote, of the civil service commission.

Civil service commissioners shall not sell to, or in any manner become parties, directly, to any contract to furnish supplies, material, or labor to the city in which they are commissioners except as provided in section 362.5. A violation of this conflict of interest provision is a simple misdemeanor.

89 Acts, ch 21, §1 SF 159  
Unnumbered paragraph 2 amended

#### 400.8 Original entrance examination—appointments.

1. The commission, when necessary under the rules, including minimum and maximum age limits, which shall be prescribed and published in advance by the commission and posted in the city hall, shall hold examinations for the purpose of determining the qualifications of applicants for positions under civil service, other than promotions, which examinations shall be practical in character and shall relate to matters which will fairly test the mental and physical ability of the applicant to discharge the duties of the position to which the applicant seeks appointment. However, the physical examination of applicants for appointment to the positions of police officer, police matron or fire fighter shall be held under the direction of and as specified by the boards of trustees of the fire or police retirement systems established by section 411.5 and the commission may conduct a medical examination of an applicant after a conditional offer of employment has been made to the applicant. An applicant shall not be discriminated against on the basis of height, weight, sex, or race in determining physical or mental ability of the applicant. Reasonable rules relating to strength, agility, and general health of applicants shall be prescribed. The costs of the physical examination required under this subsection shall be paid from the trust and agency fund of the city.

2. The commission shall establish the guidelines for conducting the examinations under subsection 1 of this section. It may prepare and administer the examinations or may hire persons with expertise to do so if the commission approves the examinations. It may also hire persons with expertise to consult in the preparation of such examinations if the persons so hired are employed to aid personnel of the commission in assuring that a fair examination is conducted. A fair examination shall explore the competence of the applicant in the particular field of examination.

3. All appointments to such positions shall be conditional upon a probation period of not to exceed six months, and in the case of police patrol officers and fire fighters a probation period not to exceed twelve months, during which time the appointee may be removed or discharged from such position by the appointing person or body without the right of appeal to the commission. A person removed or discharged during a probationary period shall, at the time of discharge, be given a notice in writing stating the reason or reasons for the dismissal. A copy of such notice shall be promptly filed with the commission. Continuance in the position after the expiration of such probationary period shall constitute a permanent appointment.

89 Acts, ch 187, §2 HF 573  
Subsection 1 amended

#### **400.11 Names certified—temporary appointment.**

The commission, within ninety days after the beginning of each competitive examination for original appointment or for promotion, shall certify to the city council a list of the names of the ten persons who qualify with the highest standing as a result of each examination for the position they seek to fill, or the number which have qualified if less than ten, in the order of their standing, and all newly created offices or other vacancies in positions under civil service which occur before the beginning of the next examination for the positions shall be filled from the lists, or from the preferred list existing as provided for in case of diminution of employees, within thirty days. If a tie occurs in the examination scores which would qualify persons for the tenth position on the list, the list of the names of the persons who qualify with the highest standing as a result of each examination shall include all persons who qualify for the tenth position. Preference for temporary service in civil service positions shall be given those on the lists. However, the commission may certify a list of names eligible for appointment subject to successfully completing a medical examination. The medical examination shall be provided pursuant to commission rules adopted under section 400.8.

In cities of fifty thousand or more population, the commission shall hold in reserve a second list of the ten persons next highest in standing, in order of their grade, or such number as may qualify and, thereafter, if the list of ten persons provided in the first paragraph hereof be exhausted within one year, may certify such second list of persons to the council as eligible for appointment to fill such vacancies as may exist.

Except where the preferred list exists, persons on the certified eligible list for promotion shall hold preference for promotion for two years following the date of certification, except for certified eligible lists of fire fighters as defined in section 411.1, subsection 3, which lists shall hold preference for three years upon approval of the commission, after which the lists shall be canceled and promotion to the grade shall not be made until a new list has been certified eligible for promotion.

When there is no such preferred list or certified eligible list, or when the eligible list shall be exhausted, the person or body having the appointing power may temporarily fill a newly created office or other vacancy only until an examination can be held and the names of qualified persons be certified by the commission, and such temporary appointments are hereby limited to ninety days for any one person in the same vacancy, but such limitation shall not apply to persons temporarily acting in positions regularly held by another. Any person temporarily filling a vacancy in a position of higher grade for twenty days or more, shall receive the salary paid in such higher grade.

89 Acts, ch 187, §3 HF 573  
Unnumbered paragraph 1 amended

#### **400.17 Employees under civil service—qualifications.**

Except as otherwise provided, a person shall not be appointed or employed in any capacity in the fire or police department, or any department which is governed by the civil service, until the person has passed a civil service examination as provided in this chapter, and has been certified to the city council as being eligible for the appointment. However, in an emergency in which the peace and order of the city is threatened by reason of fire, flood, storm, or mob violence, making additional protection of life and property necessary, the person having the appointing power may deputize additional persons, without examination, to act as peace officers until the emergency has passed. A person may be appointed to a position subject to successfully completing a civil service medical examination. A person shall not be appointed or employed in any capacity in the fire or police department, or any department which is governed by civil service, unless the person:

1. Is of good moral character.

2. Is able to read and write the English language.
3. Is not a liquor or drug addict.

Employees shall not be required to be a resident of the city in which they are employed, but they shall become a resident of the state at the time such appointment or employment begins and shall remain a resident of the state during employment. Cities may set reasonable maximum distances outside of the corporate limits of the city that police officers, fire fighters and other critical municipal employees may live.

A person shall not be appointed, promoted, discharged, or demoted to or from a civil service position or in any other way favored or discriminated against in that position because of political or religious opinions or affiliations, race, national origin, sex, or age. However, the maximum age for a police officer or fire fighter covered by this chapter and employed for police duty or the duty of fighting fires is sixty-five years of age.

89 Acts, ch 187, §4 HF 573  
Unnumbered paragraph 1 amended

## 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. Such designated area shall not include land which is part of a century farm.

89 Acts, ch 299, §4 HF 313  
Subsection 20 amended

## CHAPTER 404

### URBAN REVITALIZATION TAX EXEMPTIONS

#### 404.2 Conditions mandatory.

A city may only exercise the authority conferred upon it in this chapter after the following conditions have been met:

1. The governing body has adopted a resolution finding that the rehabilitation, conservation, redevelopment, or a combination thereof of the area is necessary in the interest of the public health, safety, or welfare of the residents of the city and the area meets the criteria of section 404.1.

2. The city has prepared a proposed plan for the designated revitalization area.

The proposed plan shall include all of the following:

a. A legal description of the real estate forming the boundaries of the proposed area along with a map depicting the existing parcels of real estate.

b. The existing assessed valuation of the real estate in the proposed area, listing the land and building values separately.

c. A list of names and addresses of the owners of record of real estate within the area.

d. The existing zoning classifications and district boundaries and the existing and proposed land uses within the area.

e. Any proposals for improving or expanding city services within the area including but not limited to transportation facilities, sewage, garbage collection, street maintenance, park facilities and police and fire protection.

f. A statement specifying whether the revitalization is applicable to none, some, or all of the property assessed as residential, agricultural, commercial or industrial property within the designated area or a combination thereof and whether the revitalization is for rehabilitation and additions to existing buildings or new construction or both. If revitalization is made applicable only to some

property within an assessment classification, the definition of that subset of eligible property must be by uniform criteria which further some planning objective identified in the plan. The city shall state how long it is estimated that the area shall remain a designated revitalization area which time shall be longer than one year from the date of designation and shall state any plan by the city to issue revenue bonds for revitalization projects within the area.

g. The provisions that have been made for the relocation of persons, including families, business concerns and others, whom the city anticipates will be displaced as a result of improvements to be made in the designated area.

h. Any tax exemption schedule that shall be used in lieu of the schedule set out in section 404.3, subsection 1, 2, 3 or 4. This schedule shall not allow a greater exemption, but may allow a smaller exemption, than allowed in the schedule specified in the corresponding subsection of section 404.3.

i. The percent increase in actual value requirements that shall be used in lieu of the fifteen and ten percent requirements specified in section 404.3, subsection 7 and in section 404.5. This percent increase in actual value requirements shall not be greater than that provided in this chapter and shall be the same requirements applicable to all existing revitalization areas.

j. A description of any federal, state or private grant or loan program likely to be a source of funding for that area for residential improvements and a description of any grant or loan program which the city has or will have as a source of funding for that area for residential improvements.

3. The city has scheduled a public hearing and notified all owners of record of real property located within the proposed area and the tenants living within the proposed area in accordance with section 362.3. In addition to notice by publication, notification shall also be given by ordinary mail to the last known address of the owners of record. The city shall also send notice by ordinary mail addressed to the "occupants" of city addresses located within the proposed area, unless the city council, by reason of lack of a reasonably current and complete address list, or for other good cause, shall have waived the notice. Notwithstanding section 362.3, the notice shall be given by the thirtieth day prior to the public hearing.

4. The public hearing has been held.

5. A second public hearing has been held if:

a. The city has received within thirty days after the holding of the first public hearing a valid petition requesting a second public hearing containing the signatures and current addresses of property owners that represent at least ten percent of the privately owned property within the designated revitalization area or;

b. The city has received within thirty days after the holding of the first public hearing a valid petition requesting a second public hearing containing the signatures and current addresses of tenants that represent at least ten percent of the residential units within the designated revitalization area.

At any such second public hearing the city may specifically request those in attendance to indicate the precise nature of desired changes in the proposed plan.

6. The city has adopted the proposed or amended plan for the revitalization area after the requisite number of hearings. The city may subsequently amend this plan after a hearing. Notice of the hearing shall be published as provided in section 362.3, except that at least seven days' notice must be given and the public hearing shall not be held earlier than the next regularly scheduled city council meeting following the published notice.

## CHAPTER 411

### RETIREMENT SYSTEMS FOR POLICE OFFICERS AND FIRE FIGHTERS

#### 411.13 Exemption from execution.

The right of any person to a pension, annuity, or retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or death benefit, any other right accrued or accruing to any person under this chapter, and the moneys in the various funds created under this chapter, are not subject to execution, garnishment, attachment, or any other process whatsoever, and are unassignable except as in this chapter specifically provided.

89 Acts, ch 228, §3 SF 539  
1989 amendment applies retroactively to January 1, 1989, for tax years beginning on or after that date; 89 Acts, ch 228, §10 SF 539  
Section amended

## CHAPTER 420

### CITIES UNDER SPECIAL CHARTER

#### 420.207 Taxation in general.

Sections 427.1, 427.3 to 427.11, 428.4, 428.20, 428.22, 428.23, 436.10, 436.11, 437.1, 437.3, 437.14, 441.21, 443.1 to 443.3, 444.2 to 444.5, and 447.9 to 447.13, so far as applicable, apply to cities acting under special charters.

89 Acts, ch 296, §40 SF 141  
Section amended

## CHAPTER 421

### DEPARTMENT OF REVENUE AND FINANCE

Department to collect data on income and other nonproperty wealth by school district, report in 1991; 89 Acts, ch 135, §128 HF 535  
Deposit, accounting, and payment of school surtaxes, §298.14

#### 421.10 Appeal period—denial of taxpayer's claim.

The appeal period for revision of assessment of tax, interest, and penalties set out under section 98.29, 98.46, 324.64, 422.28, or 422.54 applies to appeals to notices from the department denying changes in filing methods, denying refund claims, and denying portions of refund claims for the tax covered by that section.

89 Acts, ch 251, §10 SF 154  
Applicable to notices issued after July 1, 1989; 89 Acts, ch 251, §39 SF 154  
NEW section

421.11 to 421.13 Repealed by 62GA, ch 342, §7.

#### 421.16 Expenses.

The director, deputy directors, secretary, and assistants are entitled to receive from the state their actual necessary expenses while traveling on the business of the department. The expenditures shall be sworn to by the party who incurred the expense, and approved and allowed by the director. However, such expenses shall not be allowed residents of Polk county while in the city of Des Moines or traveling between their homes and the city of Des Moines.

89 Acts, ch 284, §6 SF 119  
Section amended

### 421.17 Powers and duties of director.

In addition to the powers and duties transferred to the director of revenue and finance, the director shall have and assume the following powers and duties:

1. To have and exercise general supervision over the administration of the assessment and tax laws of the state, over boards of supervisors and all other officers or boards 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 to recipients or to providers of services to recipients which the investigations division of the department of inspections and appeals is attempting to collect on behalf of the state. For purposes of this subsection, "public assistance" means 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 investigations division of the department of inspections and appeals shall obtain and forward to the department of revenue and finance the full name and social security number of the debtor. The department of revenue and finance shall 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 investigations division of the department of inspections and appeals. However, only relevant information required by the child support unit, by the foster care recovery unit, or by the investigations division of the department of inspections and appeals shall be provided by the department of revenue and finance. The information shall be held in confidence and shall be used for purposes of setoff only.

c. The child support recovery unit, the foster care recovery unit, and the investigations division of the department of inspections and appeals shall, at least annually, submit to the department of revenue and finance for setoff the debts described in this subsection, which are at least fifty dollars, on a date to be specified by the department of human services and the department of inspections and appeals 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 investigations division of the department of inspections and appeals as to whether the debtor is entitled to a refund or rebate and if so entitled shall notify the unit or division of the amount of the 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 investigations division of the department of inspections and appeals shall send written notification to the debtor, and a copy of the notice to the department of revenue and finance, of the unit's or division's assertion of its rights, or the rights of the department of human services, or the rights of an individual not eligible as a public assistance recipient to all or a portion of the debtor's refund or rebate and the entitlement to recover the debt through the setoff procedure, the basis of the assertion, the opportunity to request that a joint income tax refund or rebate be divided between spouses, the debtor's opportunity to give written notice of intent to contest the claim, and the fact that failure to contest the claim by written application for a hearing will result in a waiver of the opportunity to contest the claim, causing final setoff by default. Upon application filed with the department of human services within fifteen days from the mailing of the notice of entitlement to a refund or rebate, the department of human services shall grant a hearing pursuant to chapters 10A and 17A. An

appeal taken from the decision of an administrative law judge and subsequent appeals shall be taken pursuant to chapter 17A.

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 investigations division of the department of inspections and appeals, filed within fifteen days from the mailing of the notice of entitlement to a refund or rebate, and upon receipt of the full name and social security number of the debtor's spouse, the unit or division shall notify the department of revenue and finance of the request to divide a joint income tax refund or rebate. The department of revenue and finance shall upon receipt of the notice divide a joint income tax refund or rebate between the debtor and the debtor's spouse in proportion to each spouse's net income as determined under section 422.7.

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 investigations division of the department of inspections and appeals, set off the debt against the debtor's income tax refund or rebate. However, if a debtor has made all current child support or foster care payments in accordance with a court order or an assessment of foster care liability for the twelve months preceding the proposed setoff and has regularly made delinquent child support or foster care payments during those twelve months, the child support or foster care recovery unit shall notify the department of revenue and finance not to set off the debt against the debtor's income tax refund or rebate. If a debtor has made all current repayment of public assistance in accordance with a court order or voluntary repayment agreement for the twelve months preceding the proposed setoff and has regularly made delinquent payments during those twelve months, the investigations division of the department of inspections and appeals shall notify the department of revenue and finance not to set off the debt against the debtor's income tax refund or rebate. The department of revenue and finance shall refund any balance of the income tax refund or rebate to the debtor. The department of revenue and finance shall periodically transfer the amount set off to the child support recovery unit, the foster care recovery unit, or the investigations division of the department of inspections and appeals. If the debtor gives timely written notice of intent to contest the claim the department of revenue and finance shall hold the refund or rebate until final disposition of the contested claim pursuant to chapter 17A or by court judgment. The child support recovery unit, the foster care recovery unit, or the investigations division of the department of inspections and appeals shall notify the debtor in writing upon completion of setoff.

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 an administrative law judge and any subsequent appeals shall be taken pursuant to chapter 17A.

f. Upon the timely request of a defaulter or a defaulter's spouse to the college 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 investigations division of the department of inspections and appeals under subsection 21, next priority shall be given to claims filed by a clerk of the 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.

89 Acts, ch 250, §2, 3 SF 153  
Subsections 21 and 26 amended

#### **421.27 Exceptions from penalty provisions.**

The penalty provided for failure to remit at least ninety percent of the tax due or of the tax due with the filing of the deposit form or return or to pay at least ninety percent of the tax required to be shown on the return under section 98.28, 98.46, 324.65, 422.16, 422.25, 422.58, 422.66, 423.18, 450.63, 450A.12, or 451.12 shall not be assessed by the department under any of the following conditions:

1. The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department.

2. The taxpayer provides written notification to the department of a federal audit while it is in progress and voluntarily files an amended return within sixty days of the final disposition of the federal government's audit.

3. The return is timely, but erroneously, mailed with adequate postage to the internal revenue service or another state agency and the taxpayer provides proof of timely mailing with adequate postage.

4. The return is timely mailed with adequate postage to the department of revenue and finance and the taxpayer provides proof of timely mailing with adequate postage.

5. The taxpayer presents proof that the taxpayer relied upon documented written erroneous advice from the department, county treasurer, or federal internal revenue service, whichever is appropriate.

89 Acts, ch 6, §3 SF 113  
Unnumbered paragraph 1 amended

#### **421.31 Powers and duties.**

In addition to the powers and duties transferred to the director of revenue and finance, the director has the following powers and duties:

1. *Collection and payment of funds—monthly payments.* To control the payment of all moneys into the treasury, and all payments from the treasury by the preparation of appropriate warrants, or warrant checks, directing such collections and payment, and to advise the state treasurer monthly in writing of the amount of public funds not currently needed for operating expenses. Whenever the state treasury includes state funds that require distribution to counties, municipalities, or other political subdivisions of this state, and the counties, municipalities, and other political subdivisions certify to the director that warrants will be stamped for lack of funds within the thirty-day period following certification, the director may partially distribute the funds on a monthly basis. Whenever the law requires

that any funds be paid by a specific date, the director shall prepare a final accounting and shall make a final distribution of any remaining funds prior to that date.

2. *Preaudit system.* To establish and fix a reasonable imprest cash fund for each state department and institution for disbursement purposes where needed. These revolving funds shall be reimbursed only upon vouchers approved by the director. It is the purpose of this subsection to establish a preaudit system of settling all claims against the state, but the preaudit system is not applicable to the institutions under the control of the state board of regents or to the state fair board.

3. *Audit of claims.* To audit all demands by the state, and to preaudit all accounts submitted for the issuance of warrants.

4. *Contracts.* To certify, record, and encumber all formal contracts to prevent overcommitment of appropriations and allotments.

5. *Accounts.* To keep the central budget and proprietary control accounts of the state government in accordance with generally accepted accounting principles. Budget accounts are those accounts maintained to control the receipt and disposition of all funds, appropriations, and allotments. Proprietary accounts are those accounts relating to assets, liabilities, income, and expense.

6. *Fair board and board of regents.* To control the financial operations of the state fair board and the institutions under the state board of regents:

a. By charging all warrants issued to the respective educational institutions and the state fair board to an advance account to be further accounted for and not as an expense which requires no further accounting.

b. By charging all collections made by the educational institutions and state fair board to the respective advance accounts of the institutions and state fair board, and by crediting all such repayment collections to the respective appropriations and special funds.

c. By charging all disbursements made to the respective allotment accounts of each educational institution or state fair board and by crediting all such disbursements to the respective advance and inventory accounts.

d. By requiring a monthly abstract of all receipts and of all disbursements, both money and stores, and a complete account-current each month from each educational institution and the state fair board.

7. *Custody of records.* To have the custody of all books, papers, records, documents, vouchers, conveyances, leases, mortgages, bonds, and other securities appertaining to the fiscal affairs and property of the state, which are not required to be kept in some other office.

8. *Interest of the permanent school fund.* To transfer the interest of the permanent school fund to the credit of the first in the nation in education foundation as provided in section 302.1A.

9. *Department of human services.* Assign an employee of the department of revenue and finance to check and audit all claims against the administrators of the divisions of the department of human services controlling state institutions, before the claims are approved by the human services administrators. The director of the department of revenue and finance shall keep all records and accounts relating to the expenditures of the human services administrators. The employee, in the checking and auditing of claims against the human services administrators and keeping the records and accounts of the human services administrators, is under the direction and supervision of the director of the department of revenue and finance, and acts as an agent of that director. The director of the department of human services shall furnish the employee of the director of the department of revenue and finance with office space and help and assistance as necessary to properly perform the duties specified in this subsection.

10. *Forms.* To prescribe all accounting and business forms and the system of accounts and reports of financial transactions by all departments and agencies of the state government other than those of the legislative branch.

89 Acts, ch 284, §7 SF 119  
NEW subsection 10

#### **421.39 Claims—approval.**

The director of the department of revenue and finance before approving a claim shall determine:

1. That the creation of the claim is clearly authorized by law. Statutes authorizing the expenditure may be referenced through account coding authorized by the director.

2. That the claim has been authorized by an officer or official body having legal authority to so authorize and that the fact of authorization has been certified to the director of the department of revenue and finance by such officer or official body.

3. That all legal requirements have been observed, including notice and opportunity for competition, if required by law.

4. That the claim is in proper form as the director may provide.

5. That the charges are reasonable, proper, and correct and no part of the claim has been paid.

89 Acts, ch 284, §8 SF 119  
Subsection 1 amended

#### **421.40 Vouchers—interest—payment of claims.**

Before a warrant or its equivalent is issued for a claim payable from the state treasury, the department shall file an itemized voucher showing in detail the items of service, expense, thing furnished, or contract for which payment is sought. However, the director may authorize the prepayment of claims when the best interests of the state are served under rules adopted by the department. The claimant's original invoice shall be attached to a department's approved voucher. The director of the department of revenue and finance shall adopt rules specifying the form and contents for invoices submitted by a vendor to a department. The requirements apply to acceptance of an invoice by a department. A department shall not impose additional or different requirements on submission of invoices than those contained in rules of the director of the department of revenue and finance unless the director exempts the department from the invoice requirements or a part of the requirements upon a finding that compliance would result in poor accounting or management practices.

Vouchers for postage, stamped envelopes, and postal cards may be audited as soon as an order for them is entered.

The departments, the general assembly, and the courts shall pay their claims in a timely manner. If a claim for services, supplies, materials, or a contract which is payable from the state treasury remains unpaid after sixty days following the receipt of the claim or the satisfactory delivery, furnishing, or performance of the services, supplies, materials, or contract, whichever date is later, the state shall pay interest at the rate of one percent per month on the unpaid amount of the claim. This paragraph does not apply to claims against the state under chapters 25 and 25A or to claims paid by federal funds. The interest shall be charged to the appropriation or fund to which the claim is certified. The director of the department of revenue and finance shall adopt rules under chapter 17A relating to the administration of this paragraph.

89 Acts, ch 284, §9 SF 119  
Unnumbered paragraph 1 amended

## CHAPTER 422

## INCOME, CORPORATION, SALES AND BANK TAX

**422.3 Definitions controlling chapter.**

For the purpose of this chapter and unless otherwise required by the context:

1. The word "taxpayer" includes any person, corporation, or fiduciary who is subject to a tax imposed by this chapter.
2. "Department" means the department of revenue and finance.
3. "Court" means the district court in the county of the taxpayer's residence.
4. "Director" means the director of revenue and finance.
5. "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, 1989, whichever is applicable.

89 Acts, ch 285, §2 SF 186

1989 amendment to subsection 5 was apparently intended to be retroactive to January 1, 1988, for tax years beginning on or after that date; 89 Acts, ch 285, §10; corrective legislation is pending SF 186

Subsection 5 amended

**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, but with the adjustments specified in section 422.7 plus the Iowa income tax deducted in computing the federal taxable income and minus federal income taxes as provided in section 422.9.
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, "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 if an individual is permitted to file as a corporation, under the Internal Revenue Code, that fictional status is not recognized for purposes of this chapter, and the individual's taxable income shall be computed as required under the Internal Revenue Code relating to individuals not filing as a corporation, with the adjustments allowed by this chapter.

11. The words "*head of household*" have the same meaning as provided by the Internal Revenue Code.

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 word "*wages*" has the same meaning as provided by the Internal Revenue Code.

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 by October 15 of the calendar year preceding the calendar year for which the factor is determined, which reflects the purchasing power of the dollar as a result of inflation during the fiscal year ending in the calendar year preceding the calendar year for which the factor is determined. In determining the annual 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 second quarter of the calendar year by the bureau of economic analysis of the United States department of commerce and shall add one-half of that percent change to one hundred percent. The annual inflation factor and the cumulative inflation factor shall each be expressed as a percentage rounded to the nearest one-tenth of one percent. The annual inflation factor shall not be less than one hundred percent.

b. "Cumulative inflation factor" means the product of the annual inflation factor for the 1988 calendar year and all annual inflation factors for subsequent calendar years as determined pursuant to this subsection. The cumulative inflation factor applies to all tax years beginning on or after January 1 of the calendar year for which the latest annual inflation factor has been determined.

c. The annual inflation factor for the 1988 calendar year is one hundred percent.

d. Notwithstanding the computation of the annual inflation factor under paragraph "a", 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 October 10, is less than sixty million dollars.

18. a. "Annual standard deduction factor" means an index, expressed as a percentage, determined by the department by October 15 of the calendar year preceding the calendar year for which the factor is determined, which reflects the purchasing power of the dollar as a result of inflation during the fiscal year ending in the calendar year preceding the calendar year for which the factor is determined. In determining the annual standard deduction factor, the department shall use the annual percent change, but not less than zero percent, in the implicit price deflator for the gross national product computed for the second quarter of the calendar year by the bureau of economic analysis of the United States department of commerce and shall add one-half of that percent change to one hundred percent. The annual standard deduction factor and the cumulative standard deduction factor shall each be expressed as a percentage rounded to the nearest one-tenth of one percent. The annual standard deduction factor shall not be less than one hundred percent.

b. "Cumulative standard deduction factor" means the product of the annual standard deduction factor for the 1989 calendar year and all annual standard deduction factors for subsequent calendar years as determined pursuant to this subsection. The cumulative standard deduction factor applies to all tax years beginning on or after January 1 of the calendar year for which the latest annual standard deduction factor has been determined.

c. The annual standard deduction factor for the 1989 calendar year is one hundred percent.

89 Acts, ch 268, §1 SF 537

1989 amendment adding subsection 18 applies to tax years beginning on or after January 1, 1990; 89 Acts, ch 268, §9 NEW subsection 18

#### **422.5 Tax imposed—exclusions—alternative minimum tax.**

1. A tax is imposed upon every resident and nonresident of the state which tax shall be levied, collected, and paid annually upon and with respect to the entire taxable income as defined in this division at rates as follows:

a. On all taxable income from zero through one thousand dollars, 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, with the following adjustments:

(1) Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1), (a)(2), and (a)(5), of the Internal Revenue Code, make the 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, and add losses as required by section 58 of the Internal Revenue Code. In the case of an estate or trust, the items of tax preference, adjustments, and losses shall be apportioned between the estate or trust and the beneficiaries in accordance with rules prescribed by the director.

(2) Subtract the applicable exemption amount as follows:

(a) Seventeen thousand five hundred dollars for a married person who files separately or for an estate or trust.

(b) Twenty-six thousand dollars for a single person or an unmarried head of household.

(c) Thirty-five thousand dollars for a married couple which files a joint return.

(d) The exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this subparagraph, exceeds the following:

(i) Seventy-five thousand dollars in the case of a taxpayer described in subparagraph subdivision (a).

(ii) One hundred twelve thousand five hundred dollars in the case of a taxpayer described in subparagraph subdivision (b).

(iii) One hundred fifty thousand dollars in the case of a taxpayer described in subparagraph subdivision (c).

(3) In the case of a net operating loss computed for a tax year beginning after December 31, 1982, which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of the items of tax preference arising in such year which was taken into account in computing the net operating loss in section 422.9, subsection 3. The deduction for a net operating loss for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

The state alternative minimum tax of a taxpayer whose net capital gain deduction includes the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure, where the fair market value of the taxpayer's assets exceeds the taxpayer's liabilities immediately before such forfeiture, transfer, or sale or exchange, shall not be greater than such excess, including any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange.

In the case of a resident, including a resident estate or trust, the state's apportioned share of the state alternative minimum tax is one hundred percent of the state alternative minimum tax computed in this subsection. In the case of a nonresident, including a nonresident estate or trust, or an individual, estate, or trust that is domiciled in the state for less than the entire tax year, the state's apportioned share of the state alternative minimum tax is the amount of tax computed under this subsection, reduced by the applicable credits in sections 422.10 through 422.12 and this result multiplied by a fraction with a numerator of the sum of state net income allocated to Iowa as determined in section 422.8, subsection 2, 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 seven thousand five hundred dollars or less in the case of married persons filing jointly or filing separately on a combined return, unmarried heads of household, and surviving spouses or five thousand dollars or less in the case of all other persons; but in the event that the payment of tax under this division would reduce the net income to less than seven thousand five hundred dollars or five thousand dollars as applicable, then the tax shall be reduced to that amount which would result in allowing the taxpayer to retain a net income of seven thousand five hundred dollars or five thousand dollars as applicable. The preceding sentence does not apply to estates or trusts. For the purpose of this subsection, the entire net income, including any part of the net income not allocated to Iowa, shall be taken into account. For purposes of this subsection, net income includes all amounts of pensions or other retirement income received from any source which is not taxable under this division as a result of any other state law. If the combined net income of a husband and wife exceeds seven thousand five hundred dollars, neither of them shall receive the benefit of this subsection, and it is immaterial whether they file a joint return or separate returns. However, if a husband and wife file separate returns and have a combined net income of seven thousand five hundred dollars or less, neither spouse shall receive the benefit of this paragraph, if one spouse has a net operating loss and elects to carry back or carry forward the loss as provided in section 422.9, subsection 3. A person who is claimed as a dependent by another person as defined in section 422.12 shall not receive the benefit of this subsection if the person claiming the dependent has net income exceeding seven thousand five hundred dollars or five thousand dollars as applicable or the person claiming the dependent and the person's spouse have combined net income exceeding seven thousand five hundred dollars or five thousand dollars as applicable.

In addition, if the married persons', filing jointly or filing separately on a combined return, unmarried head of household's, or surviving spouse's net

income exceeds 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. The alternate tax described in this paragraph does not apply if one spouse elects to carry back or carry forward the loss as provided in section 422.9, subsection 3.

3. 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. Upon determination of the latest cumulative inflation factor, the director shall multiply each dollar amount set forth in subsection 1, paragraphs "a" through "i" of this section by this cumulative inflation factor, shall round off the resulting product to the nearest one dollar, and shall incorporate the result into the income tax forms and instructions for each tax year.

7. 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.

8. In addition to the other taxes imposed by this section, a tax is imposed on the amount of a lump sum distribution for which the taxpayer has elected under section 402(e) of the Internal Revenue Code to be separately taxed for federal income tax purposes for the tax year. The rate of tax is equal to twenty-five percent of the separate federal tax imposed on the amount of the lump sum distribution. A nonresident is liable for this tax only on that portion of the lump sum distribution allocable to Iowa. The total amount of the lump sum distribution subject to separate federal tax shall be included in net income for purposes of determining eligibility under the seven thousand five hundred dollar or less or five thousand dollar or less exclusion, as applicable.

9. In the case of income derived from the sale or exchange of livestock which qualifies under section 451(e) of the Internal Revenue Code because of drought, the taxpayer may elect to include the income in the taxpayer's net income in the tax year following the year of the sale or exchange in accordance with rules prescribed by the director.

89 Acts, ch 228, §4, 5 SF 539; 89 Acts, ch 251, §11 SF 154; 89 Acts, ch 268, §2, 3 SF 537; 89 Acts, ch 296, §41 SF 141  
1989 amendments to subsection 1 and adding subsection 9 apply to tax years beginning on or after January 1, 1990; 89 Acts, ch 268, §10

1989 amendments to subsection 6 apply retroactively to January 1, 1989, for tax years beginning on or after that date; 89 Acts, ch 228, §10

See Code editor's note to §22.7

Subsection 1, paragraph k, unnumbered paragraphs 2 and 4 amended

Subsection 6 stricken and former subsections 7-9 renumbered as 6-8

Subsection 6 (formerly 7) amended

NEW subsection 9

### 422.6 Income from estates or trusts.

The tax imposed by section 422.5 less the credit allowed under section 422.10 and the personal exemption credit allowed under section 422.12 apply to and are a charge against estates and trusts with respect to their taxable income, and the rates are the same as those applicable to individuals. The fiduciary shall make the return of income for the estate or trust for which the fiduciary acts, whether the income is taxable to the estate or trust or to the beneficiaries.

The beneficiary of a trust who receives an accumulation distribution shall be allowed credit without interest for the Iowa income taxes paid by the trust attributable to the accumulation distribution in a manner corresponding to the provisions for credit under the federal income tax relating to accumulation distributions as contained in the Internal Revenue Code. The trust is not entitled to a refund of taxes paid on the distributions. The trust shall maintain detailed records to verify the computation of the tax.

89 Acts, ch 251, §12 SF 154  
Unnumbered paragraph 1 amended

### 422.7 "Net income" - how computed.

The term "*net income*" means the adjusted gross 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 and from securities of state and other political subdivisions exempt from federal income tax under the Internal Revenue Code.
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. 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. The disability income exclusion provided in section 105(d) of the Internal Revenue Code, 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.
6. 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.
7. 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 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.

8. 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 adjusted gross income.

9. 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 adjusted gross income.

10. Notwithstanding the method for computing the amount of travel expenses that may be deducted under section 162(h) of the Internal Revenue Code, for tax years beginning on or after January 1, 1987, a member of the general assembly whose place of residence within the legislative district is greater than fifty miles from the capitol building of the state may deduct the total amount per day determined under section 162(h)(1)(B) of the Internal Revenue Code and a member of the general assembly whose place of residence within the legislative district is fifty or fewer miles from the capitol building of the state may deduct fifty dollars per day. This subsection does not apply to a member of the general assembly who elects to itemize for state tax purposes the member's travel expenses.

11. 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 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 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 as amended to and including December 31, 1985, excluding section 168(f)(8) in making the determination.

12. 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 sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, 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.

13. 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 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. The benefits included in net income must be allocated between the spouses in the ratio of the social security benefits received by each spouse to the total of these benefits received by both spouses.

14. 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. This amount may be recovered through cost depletion or depreciation, as appropriate under rules prescribed by the director.

15. 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.

16. 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.

17. Add interest and dividends from regulated investment companies exempt from federal income tax under the Internal Revenue Code 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.

18. For a person who is disabled, is fifty-five 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, subtract, to the extent included, the total amount of pension, annuity, or retirement allowances received under the peace officers' retirement system under chapter 97A, the Iowa public employees' retirement system under chapter 97B, the Iowa police officers and firefighters retirement system under chapter 411, the judicial retirement system under chapter 602, article 9, and any federal retirement and disability system, as a result of being an officer or employee of the federal government, up to a maximum each tax year of two thousand five hundred dollars for a person who files a separate state income tax return and five thousand dollars 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.

19. Subtract interest earned on bonds and notes issued by the agricultural development authority as provided in section 175.17, subsection 10, to the extent the interest is included in federal adjusted gross income.

20. Subtract, to the extent included, the proceeds received pursuant to a judgment in or settlement of a lawsuit against the manufacturer or distributor of a Vietnam herbicide for damages resulting from exposure to the herbicide. This subsection applies to proceeds received by a taxpayer who is a disabled veteran or who is a beneficiary of a disabled veteran.

For purposes of this subsection:

a. "*Vietnam herbicide*" means a herbicide, defoliant or other causative agent containing dioxin, including, but not limited to, Agent Orange, used in the Vietnam conflict beginning December 22, 1961, and ending May 7, 1975, inclusive.

b. "*Agent Orange*" means the herbicide composed of trichlorophenoxyacetic acid and dichlorophenoxyacetic acid and the contaminant dioxin (TCDD).

21. Subtract forty-five percent of the net capital gain from the following:

a. Net capital gain from the sale of real property used in a business, in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years, or from the sale of a business, as defined in section 422.42, in which the taxpayer was employed or in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years. The sale of a business means the sale of all or substantially all of the tangible personal property or service of the business.

b. Net capital gain from the sale of cattle or horses held by the taxpayer for breeding, draft, dairy, or sporting purposes for a period of twenty-four months or more from the date of acquisition; but only if the taxpayer received more than one-half of the taxpayer's gross income from farming or ranching operations during the tax year.

c. Net capital gain from the sale of breeding livestock, other than cattle or horses, if the livestock is held by the taxpayer for a period of twelve months or more from the date of acquisition; but only if the taxpayer received more than one-half of the taxpayer's gross income from farming or ranching operations during the tax year.

d. Net capital gain from the sale of timber as defined in section 631(a) of the Internal Revenue Code.

The net capital gain of paragraphs "a", "b", "c", and "d" together shall not exceed seventeen thousand five hundred dollars for the tax year. 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 fifty dollars.

22. Subtract, to the extent included, the amounts paid to an eligible individual under section 105 of the Civil Liberties Act of 1988, Pub. L. No. 100-383, Title I, as satisfaction for a claim against the United States arising out of the confinement, holding in custody, relocation, or other deprivation of liberty or property of an individual of Japanese ancestry.

89 Acts, ch 175, §2 SF 423; 89 Acts, ch 225, §18, 19 HF 780; 89 Acts, ch 228, §6, 7 SF 539; 89 Acts, ch 249, §2 HF 578; 89 Acts, ch 251, §13 SF 154; 89 Acts, ch 268, §4 SF 537; 89 Acts, ch 285, §3 SF 186

1989 amendment to unnumbered paragraph 1 retroactive to January 1, 1989, for tax years beginning on or after that date; 89 Acts, ch 251, §40 SF 154

1989 amendments to subsection 12 apply retroactively to January 1, 1989, for tax years beginning on or after that date; 89 Acts, ch 225, §33 HF 780

\*"Fifty-five" probably intended; corrective legislation pending

New subsection 18 applies retroactively to January 1, 1989, for tax years beginning on or after that date; this subsection repealed effective January 1, 1990, for tax years beginning on or after that date; 89 Acts, ch 228, §10, 11 SF 539

New subsection 20 applies retroactively to January 1, 1989, for tax years beginning on or after that date; 89 Acts, ch 249, §3 HF 278

1989 amendment adding subsection 21 applies to tax years beginning on or after January 1, 1990; 89 Acts, ch 268, §10

1989 amendment adding subsection 22 is retroactive to January 1, 1988, for tax years beginning on or after that date; 89 Acts, ch 285, §10 SF 186

Unnumbered paragraph 1 amended

Subsection 12, paragraphs a, b, and c and unnumbered paragraph 2 stricken and rewritten

Subsection 14 stricken

NEW subsections 18-22

## 422.9 Deductions from net income.

In computing taxable income of individuals, there shall be deducted from net income the larger of the following amounts:

1. An optional standard deduction, after deduction of federal income tax, equal to one thousand two hundred thirty dollars for a married person who files separately or a single person or equal to three thousand thirty dollars for a husband and wife who file a joint return, a surviving spouse, or an unmarried head of household. The optional standard deduction shall not exceed the amount remaining after deduction of the federal income tax.

2. The total of contributions, interest, taxes, medical expense, nonbusiness losses, miscellaneous expenses and moving expenses deductible for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

- a. Subtract the deduction for Iowa income taxes.
- b. Add the amount of federal income taxes paid or accrued as the case may be, during the tax year, adjusted by any federal income tax refunds. Provided, however, that where married persons, who have filed a joint federal income tax return, file separately, such total shall be divided between them according to the portion thereof paid or accrued, as the case may be, by each.

c. Add the amount by which expenses paid or incurred in connection with the adoption of a child by the taxpayer exceed three percent of the net income of the taxpayer, or of the taxpayer and spouse in the case of a joint return. The expenses may include medical and hospital expenses of the 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. 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.

f. 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, 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 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.

89 Acts, ch 268, §5 SF 537

1989 amendment striking subsection 6 applies to tax years beginning on or after January 1, 1990; 89 Acts, ch 268, §10 Subsection 6 stricken

**422.11 Iowa venture capital fund investment credit.** Repealed by 89 Acts, ch 251, §38.SF 154

**422.11A New jobs tax credit.**

The taxes imposed under this division, less credits allowed under sections 422.10 and 422.12, 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. An individual may claim the new jobs tax credit allowed a partnership, subchapter S corporation, or 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 the partnership, subchapter S corporation, or estate or trust. 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, whichever is the earlier. 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.

89 Acts, ch 251, §14 SF 154

Section amended

**422.11B Minimum tax credit.**

1. There is allowed as a credit against the tax determined in section 422.5, subsection 1, paragraphs "a" through "j" for a tax year an amount equal to the minimum tax credit for that tax year.

The minimum tax credit for a tax year is the excess, if any, of the adjusted net minimum tax imposed for all prior tax years beginning on or after January 1, 1987, over the amount allowable as a credit under this section for those prior tax years.

2. The allowable credit under subsection 1 for a tax year shall not exceed the excess, if any, of the tax determined in section 422.5, subsection 1, paragraphs "a" through "j" over the state alternative minimum tax as determined in section 422.5, subsection 1, paragraph "k".

The net minimum tax for a tax year is the excess, if any, of the tax determined in section 422.5, subsection 1, paragraph "k" for the tax year over the tax determined in section 422.5, subsection 1, paragraphs "a" through "j" for the tax year.

The adjusted net minimum tax for a tax year is the net minimum tax for the tax year reduced by the amount which would be the net minimum tax if the only item of tax preference taken into account was that described in paragraph (6) of section 57(a) of the Internal Revenue Code.

89 Acts, ch 285, §4 SF 186

Applies retroactively to January 1, 1987, for tax years beginning on or after that date; 89 Acts, ch 285, §11 SF 186  
NEW section

#### **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, twenty dollars.

b. For a head of household, or a husband and wife filing a joint return, forty dollars.

c. For each dependent, an additional fifteen dollars. As used in this section, the term "dependent" has the same meaning as provided by the Internal Revenue Code.

d. For a single individual, husband, wife or head of household, an additional exemption of twenty 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 twenty 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.

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.

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.

89 Acts, ch 296, §42 SF 141  
Subsection 1 amended

#### **422.12B Earned income tax credit.**

1. The taxes imposed under this division, less credits allowed under sections 422.10 through 422.12, shall be reduced by an earned income credit equal to five percent of the federal earned income credit received by the taxpayer under section 32(b) of the Internal Revenue Code. Any credit in excess of the tax liability is nonrefundable.

2. Married taxpayers electing to file separate returns or filing separately on a combined return may avail themselves of the earned income credit by allocating the earned income credit to each spouse in the proportion that each spouse's respective earned income bears to the total combined earned 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.

89 Acts, ch 268, §6 SF 537  
Applies to tax years beginning on or after January 1, 1990; 89 Acts, ch 268, §9 SF 537  
NEW section

#### **422.13 Return by individual.**

1. A resident or nonresident of this state shall make a return, signed in accordance with forms and rules prescribed by the director, if any of the following are applicable:

a. The individual is required to file a federal income tax return under the Internal Revenue Code.

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.

89 Acts, ch 251, §15 SF 154  
Subsection 1, unnumbered paragraph 1 amended

#### **422.14 Return by fiduciary.**

1. A fiduciary subject to taxation under this division, as provided in section 422.6, shall make a return, signed in accordance with forms and rules prescribed by the director, for the individual, estate, or trust for whom or for which the fiduciary acts, if the taxable income thereof amounts to six hundred dollars or more. A nonresident fiduciary shall file a copy of the federal income tax return for the current tax year with the return required by this section.

2. Under such regulations as the director may prescribe, a return may be made by one of two or more joint fiduciaries.

3. Fiduciaries required to make returns under this division shall be subject to all the provisions of this division which apply to individuals.

89 Acts, ch 251, §16 SF 154  
Subsection 1 amended

#### **422.16 Withholding of income tax at source—penalties—interest—declaration of estimated tax—bond.**

1. Every withholding agent and every employer as defined in this chapter and further defined in the Internal Revenue Code, with respect to income tax collected at source, making payment of wages to a nonresident employee working in Iowa, or to a resident employee, shall deduct and withhold from the wages an amount which will approximate the employee's annual tax liability on a calendar year basis, calculated on the basis of tables to be prepared by the department and schedules or percentage rates, based on the wages, to be prescribed by the department. Every employee or other person shall declare to the employer or

withholding agent the number of the employee's or other person's personal exemptions and dependency exemptions or credits to be used in applying the tables and schedules or percentage rates. However, no greater number of personal or dependency exemptions or 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. 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.* A person or married couple filing a return shall make estimated tax payments if the person's or couple's Iowa income tax attributable to income other than wages subject to withholding can reasonably be expected to amount to two hundred dollars or more for the taxable year, except that, in the cases of farmers and fishermen, the exceptions provided in the Internal Revenue Code with respect to making estimated payments apply. The estimated tax shall be paid in quarterly installments. The first installment shall be paid on or before the last day of the fourth month of the taxpayer's tax year for which the estimated payments apply. The other installments shall be paid on or before the last day of the sixth month of the tax year, the last day of the ninth month of the tax year, and the last day of the first month after the tax year. However, at the election of the person or married couple, an installment of the estimated tax may be paid prior to the date prescribed for its payment. If a person or married couple filing a return has reason to believe that the person's or couple's Iowa income tax may increase or decrease, either for purposes of meeting the requirement to make estimated tax payments or for the purpose of increasing or decreasing estimated tax payments, the person or married couple shall increase or decrease any subsequent estimated tax payments accordingly.

*b.* In the case of persons or married couples filing jointly, the total balance of the tax payable after credits for taxes paid through withholding, as provided in subsection 1 of this section, or through payment of estimated tax, or a combination of withholding and estimated tax payments is due and payable on or before April 30 following the close of the calendar year, or if the return is to be made on the basis of a fiscal year, then on or before the last day of the fourth month following the close of the fiscal year.

*c.* If a taxpayer is unable to make the taxpayer's estimated tax payments, the payments may be made by a duly authorized agent, or by the guardian or other person charged with the care of the person or property of the taxpayer.

*d.* Any amount of estimated tax paid is a credit against the amount of tax found payable on a final, completed return, as provided in subsection 9, relating to the credit for the tax withheld against the tax found payable on a return properly and correctly prepared under sections 422.5 through 422.25, and any overpayment of one dollar or more shall be refunded to the taxpayer and the return constitutes a claim for refund for this purpose. Amounts less than one dollar shall not be refunded. The method provided by the Internal Revenue Code for determining what is applicable to the addition to tax for underpayment of the tax payable applies to persons required to make payments of estimated tax under this section except the amount to be added to the tax for underpayment of estimated tax is an amount determined at the rate in effect under section 421.7. This addition to tax specified for underpayment of the tax payable is not subject to waiver provisions relating to reasonable cause, except as provided in the Internal Revenue Code. Underpayment of estimated tax shall be determined in the same manner as provided under the Internal Revenue Code and the exceptions in the Internal Revenue Code also apply.

*e.* In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return for the taxable year credited to the taxpayer's tax liability for the following taxable year.

12. In the case of nonresidents having income subject to taxation by Iowa, but not subject to withholding of such tax under subsection 1 hereof, withholding agents shall withhold from such income at the same rate as provided in subsection 1 hereof, and such withholding agents and such nonresidents shall be subject to the provisions of this section, according to the context, except that such withholding agents may be absolved of such requirement to withhold taxes from such nonresident's income upon receipt of a certificate from the department issued in accordance with the provisions of section 422.17, as hereby amended. In the case of nonresidents having income from a trade or business carried on by them in whole or in part within the state of Iowa, such nonresident shall be considered to be subject to the provisions of this subsection unless such trade or business is of such nature that the business entity itself, as a withholding agent, is required to and does withhold Iowa income tax from the distributions made to such nonresident from such trade or business.

Notwithstanding this subsection, withholding agents are not required to withhold state income tax from payments subject to taxation made to nonresidents for commodity credit certificates, grain, livestock, domestic fowl, or other agricultural commodities or products sold to the withholding agents by the nonresidents or their representatives, if the withholding agents provide on forms prescribed by the department information relating to the sales required by the department to determine the state income tax liabilities of the nonresidents. However, the withholding agents may elect to make estimated tax payments on behalf of the nonresidents on the basis of the net incomes of the nonresidents from the agricultural commodities or products, if the estimated tax payments are made on or before the last day of the first month after the end of the tax years of the nonresidents.

13. The director shall enter into an agreement with the secretary of the treasury of the United States with respect to withholding of income tax as provided by this chapter, pursuant to an Act of Congress, section 1207 of the Tax Reform Act of 1976, Public Law 94-455, amending title 5, section 5517 of the United States Code.

14. The director may, when necessary and advisable in order to secure the collection of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, require an employer or withholding agent to file with the director a bond, issued by a surety company authorized to conduct business in this state and approved by the insurance commissioner as to solvency and responsibility, in an amount as the director may fix, to secure the payment of the tax and penalty due or which may become due. In lieu of the bond, securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any tax and penalty due. Upon a sale, any surplus above the amounts due under this section shall be returned to the employer or withholding agent who deposited the securities.

If the withholding agent fails to file the bond as requested by the director to secure collection of the tax, the withholding agent is subject to penalty for failure to file the bond. The penalty is equal to fifteen percent of the tax the withholding agent is required to withhold on an annual basis. However, the penalty shall not exceed five thousand dollars.

89 Acts, ch 6, §4, 5 SF 113; 89 Acts, ch 251, §17, 18 SF 154

1989 amendments to subsection 11, paragraph a, and subsection 14 take effect January 1, 1990, for tax years beginning on or after that date; 89 Acts, ch 251, §41 SF 154; 89 Acts, ch 6, §8 SF 113

1989 amendment to subsection 12 applies retroactively to January 1, 1989, for tax years beginning on or after that date; 89 Acts, ch 6, §8 SF 113

See Code editor's note to §22.7

Subsection 11, paragraph a amended

Subsection 12, unnumbered paragraph 2 amended

Subsection 14, NEW unnumbered paragraph 2

#### 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 the taxpayer's allowable deductions and credits. In lieu of such return any taxpayer may elect to list permissible deductions and credits as provided by law. It is the intent and purpose of this provision to simplify the procedure of collection of personal income tax, and the director shall have the power in any case when deemed necessary or advisable to require any taxpayer, who has made a return in accordance with the schedule herein provided for, to make an additional return in which all deductions and credits are specifically listed. The department may revise the schedules adopted in connection with such simplified form whenever such revision is necessitated by changes in federal income tax laws, or to maintain the collection of substantially the same amounts from taxpayers as would be received were the specific listing of deductions and credits required.

The department shall provide space on the prescribed income tax form, wherein the taxpayer shall enter the name of the school district of the taxpayer's residence. Such place shall be indicated by prominent type. A nonresident taxpayer shall so indicate. If such information is not supplied on the tax return it shall be deemed an incompleated return.

The director shall determine for the 1989 and each subsequent calendar year the annual and cumulative inflation factors for each calendar year to be applied to tax years beginning on or after January 1 of that calendar year. The director shall compute the new dollar amounts as specified to be adjusted in section 422.5 by the latest cumulative inflation factor and round off the result to the nearest one dollar. The annual and cumulative inflation factors determined by the director are not rules as defined in section 17A.2, subsection 7. The director shall determine for the 1990 calendar year and each subsequent calendar year the annual and cumulative standard deduction factors to be applied to tax years beginning on or after January 1 of that calendar year. The director shall compute the new dollar

amounts of the standard deductions specified in section 422.9, subsection 1, by the latest cumulative standard deduction factor and round off the result to the nearest ten dollars. The annual and cumulative standard deduction factors determined by the director are not rules as defined in section 17A.2, subsection 7.

The department shall provide on income tax forms or in the instruction booklets in a manner that will be noticeable to the taxpayers a statement that, even though the taxpayer may not have any federal or state income tax liability, the taxpayer may be eligible for the federal earned income tax credit. The statement shall also contain notice of where the taxpayer may check on the taxpayer's eligibility for this credit.

89 Acts, ch 268, §7, 8 SF 537

1989 amendments to unnumbered paragraph 4 and striking unnumbered paragraph 6 apply to tax years beginning on or after January 1, 1990; 89 Acts, ch 268, §9, 10

Voter registration forms to be inserted; 89 Acts, ch 144, §1 HF 255

Unnumbered paragraph 4 amended

Unnumbered paragraph 6 stricken

#### **422.25 Computation of tax, interest, and penalties—limitation.**

1. Within three years after the return is filed or within three years after the return became due, including any extensions of time for filing, whichever time is the later, the department shall examine it and determine the correct amount of tax, and the amount determined by the department is the tax. However, if the taxpayer omits from income an amount which will, under the Internal Revenue Code, extend the statute of limitations for assessment of federal tax to six years under the federal law, the period for examination and determination is six years. In addition to the applicable period of limitation for examination and determination, the department may make an examination and determination at any time within six months from the date of receipt by the department of written notice from the taxpayer of the final disposition of any matter between the taxpayer and the internal revenue service with respect to the particular tax year. In order to begin the running of the six-month period, the notice shall be in writing in any form sufficient to inform the department of the final disposition with respect to that year, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice.

The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return. In lieu of the period of limitation for any prior year for which an overpayment of tax or an elimination or reduction of an underpayment of tax due for that prior year results from the carryback to that prior year of a net operating loss or net capital loss, the period is the period of limitation for the taxable year of the net operating loss or net capital loss which results in the carryback. The burden of proof of additional tax owing under the six-year period, or unlimited period, is on the department. If the tax found due is greater than the amount paid, the department shall compute the amount due, together with interest and penalties as provided in subsection 2, and shall notify the taxpayer by mail of the total, which shall be computed as a sum certain if paid on or before the last day of the month in which the notice is postmarked, or on or before the last day of the following month if the notice is postmarked after the twentieth day of any month. The notice shall also inform the taxpayer of the additional interest and penalty which will be added to the total due if not paid on or before the last day of the applicable month.

2. In addition to the tax or additional tax determined by the department under subsection 1, the taxpayer shall pay interest on the tax or additional tax at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. If any person fails to remit at least ninety percent of the tax due with the filing of the return on or before the due date, or pays less than ninety percent of any tax

required to be shown on the return, 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. In case of willful failure to file a return with intent to evade tax, or in case of willfully filing a false 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 return seventy-five percent of the amount of the tax. The penalty imposed under this subsection is not subject to waiver.

3. If the amount of the tax as determined by the department is less than the amount paid, the excess shall be refunded with interest, the interest to begin to accrue on the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the latest, at the rate in effect under section 421.7 counting each fraction of a month as an entire month under the rules prescribed by the director. If an overpayment of tax results from a net operating loss or net capital loss which is carried back to a prior year, the overpayment, for purposes of computing interest on refunds, shall be considered as having been made on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or on the first day of the second calendar month following the date of the actual payment of the tax, whichever is later. However, when the net operating loss or net capital loss carryback to a prior year eliminates or reduces an underpayment of tax due for an earlier year, the full amount of the underpayment of tax shall bear interest at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month from the due date of the tax for the earlier year to the last day of the taxable year in which the net operating loss or net capital loss occurred.

4. All payments received must be credited first, to the penalty and interest accrued, and then to the tax due.

5. A person or withholding agent required to supply information, to pay tax, or to make, sign, or file a semimonthly, monthly, or quarterly deposit form or return or supplemental return, who willfully makes a false or fraudulent semimonthly, monthly, or quarterly deposit form or return, or willfully fails to pay the tax, supply the information, or make, sign, or file the semimonthly, monthly, or quarterly deposit form or return, at the time or times required by law, is guilty of a fraudulent practice.

6. The certificate of the director to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required under the provisions of this division shall be prima facie evidence thereof except as otherwise provided in this section.

7. The periods of limitation provided by this section may be extended by the taxpayer by signing a waiver agreement to be provided by the department. The agreement shall stipulate the period of extension and the year or years to which the extension applies. It shall provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

8. A person or withholding agent who willfully attempts in any manner to defeat or evade a tax imposed by this division or the payment of the tax, upon conviction for each offense is guilty of a class "D" felony.

9. The jurisdiction of any offense as defined in this section is in the county of the residence of the person so charged, unless such person be a nonresident of this state or the person's residence in this state is not established, in either of which events jurisdiction of such offense is in the county of the seat of government of the state of Iowa.

10. A prosecution for any offense defined in this section must be commenced within six years after the commission thereof, and not after.

### 422.33 Corporate tax imposed—credit.

1. A tax is imposed annually upon each corporation organized under the laws of this state, and upon each foreign corporation doing business in this state, or deriving income from sources within this state, in an amount computed by applying the following rates of taxation to the net income received by the corporation during the income year:

a. On the first twenty-five thousand dollars of taxable income, or any part thereof, the rate of six percent.

b. On taxable income between twenty-five thousand dollars and one hundred thousand dollars or any part thereof, the rate of eight percent.

c. On taxable income between one hundred thousand dollars and two hundred fifty thousand dollars or any part thereof, the rate of ten percent.

d. On taxable income of two hundred fifty thousand dollars or more, the rate of twelve percent.

*"Income from sources within this state"* means income from real or tangible property located or having a situs in this state.

1A. There is imposed upon each corporation exempt from the general business tax on corporations by section 422.34, subsections 2 through 6, a tax at the rates in subsection 1 upon the state's apportioned share computed in accordance with subsections 2 and 3 of the unrelated business income computed in accordance with the Internal Revenue Code and with the adjustments set forth in section 422.35.

2. If the trade or business of the corporation is carried on entirely within the state, the tax shall be imposed on the entire net income, but if the trade or business is carried on partly within and partly without the state or if income is derived from sources partly within and partly without the state, the tax shall be imposed only on the portion of the net income reasonably attributable to the trade or business or sources within the state, with the net income attributable to the state to be determined as follows:

a. Nonbusiness interest, dividends, rents and royalties, less related expenses, shall be allocated within and without the state in the following manner:

(1) Nonbusiness interest, dividends, and royalties from patents and copyrights shall be allocable to this state if the taxpayer's commercial domicile is in this state.

(2) Nonbusiness rents and royalties received from real property located in this state are allocable to this state.

(3) Nonbusiness rents and royalties received from tangible personal property are allocable to this state to the extent that the property is utilized in this state; or in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown, or unascertainable by the taxpayer tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payor obtained possession.

(4) Nonbusiness capital gains and losses from the sale or other disposition of assets shall be allocated as follows:

Gains and losses from the sale or other disposition of real property located in this state are allocable to this state.

Gains and losses from the sale or other disposition of tangible personal property are allocable to this state if the property had a situs in this state at the time of the

sale or disposition or if the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

Gains and losses from the sale or disposition of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

b. Net nonbusiness income of the above class having been separately allocated and deducted as above provided, the remaining net business income of the taxpayer shall be allocated and apportioned as follows:

(1) Business interest, dividends, rents, and royalties shall be reasonably apportioned within and without the state under rules adopted by the director.

(2) Capital gains and losses from the sale or other disposition of assets shall be apportioned to the state based upon the business activity ratio applicable to the year the gain or loss is determined if the corporation determines Iowa taxable income by a sales, gross receipts or other business activity ratio. If the corporation has only allocable income, capital gains and losses from the sale or other disposition of assets shall be allocated in accordance with paragraph "a", subparagraph (4).

(3) Where income is derived from business other than the manufacture or sale of tangible personal property, the income shall be specifically allocated or equitably apportioned within and without the state under rules of the director.

(4) Where income is derived from the manufacture or sale of tangible personal property, the part attributable to business within the state shall be in that proportion which the gross sales made within the state bear to the total gross sales.

(5) Where income consists of more than one class of income as provided in subparagraphs (1) to (4) of this paragraph, it shall be reasonably apportioned by the business activity ratio provided in rules adopted by the director.

(6) The gross sales of the corporation within the state shall be taken to be the gross sales from goods delivered or shipped to a purchaser within the state regardless of the f.o.b. point or other conditions of the sale, excluding deliveries for transportation out of the state.

For the purpose of this section, the word "sale" shall include exchange, and the word "manufacture" shall include the extraction and recovery of natural resources and all processes of fabricating and curing. The words "tangible personal property" shall be taken to mean corporeal personal property, such as machinery, tools, implements, goods, wares, and merchandise, and shall not be taken to mean money deposits in banks, shares of stock, bonds, notes, credits, or evidence of an interest in property and evidences of debt.

3. If any taxpayer believes that the method of allocation and apportionment hereinbefore prescribed, as administered by the director and applied to the taxpayer's business, has operated or will so operate as to subject the taxpayer to taxation on a greater portion of the taxpayer's net income than is reasonably attributable to business or sources within the state, the taxpayer shall be entitled to file with the director a statement of the taxpayer's objections and of such alternative method of allocation and apportionment as the taxpayer believes to be proper under the circumstances with such detail and proof and within such time as the director may reasonably prescribe; and if the director shall conclude that the method of allocation and apportionment theretofore employed is in fact inapplicable and inequitable, the director shall redetermine the taxable income by such other method of allocation and apportionment as seems best calculated to assign to the state for taxation the portion of the income reasonably attributable to business and sources within the state, not exceeding, however, the amount which would be arrived at by application of the statutory rules for apportionment.

4. In addition to all taxes imposed under this division, there is imposed upon each corporation doing business within the state the greater of the tax determined in subsection 1, paragraphs "a" through "d" or the state alternative minimum tax

equal to sixty percent of the maximum state corporate income tax rate, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer computed under this subsection.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income as computed with the adjustments in section 422.35 and with the following adjustments:

a. Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1) and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4) and (d), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code. In making the adjustment under section 56(c)(1) of the Internal Revenue Code, interest and dividends from federal securities and interest and dividends from state and other political subdivisions and from regulated investment companies exempt from federal income tax under the Internal Revenue Code, net of amortization of any discount or premium, shall be subtracted.

b. Apply the allocation and apportionment provisions of subsection 2.

c. Subtract an exemption amount of forty thousand dollars. This exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this paragraph, exceeds one hundred fifty thousand dollars.

d. In the case of a net operating loss computed for a tax year beginning after December 31, 1986 which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of items of tax preference and adjustments arising in the tax year which is taken into account in computing the net operating loss in section 422.35, subsection 11. The deduction for a net operating loss for a tax year beginning after December 31, 1986 which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

5. The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state equal to six and one-half percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to the total qualified research expenditures. For purposes of this subsection, "*qualifying expenditures for increasing research activities*" means the qualifying expenditures as defined for the federal credit for increasing research activities which would be allowable under section 41 of the Internal Revenue Code.

Any credit in excess of the tax liability for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on its final, completed return credited to the tax liability for the following taxable year.

6. The taxes imposed under this division shall be reduced by a new jobs tax credit. An industry which has entered into an agreement under chapter 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.

7. *a.* There is allowed as a credit against the tax determined in subsection 1 for a tax year an amount equal to the minimum tax credit for that tax year.

The minimum tax credit for a tax year is the excess, if any, of the adjusted net minimum tax imposed for all prior tax years beginning on or after January 1, 1987, over the amount allowable as a credit under this subsection for those prior tax years.

*b.* The allowable credit under paragraph "a" for a tax year shall not exceed the excess, if any, of the tax determined in subsection 1 over the state alternative minimum tax as determined in subsection 4.

The net minimum tax for a tax year is the excess, if any, of the tax determined in subsection 4 for the tax year over the tax determined in subsection 1 for the tax year.

The adjusted net minimum tax for a tax year is the net minimum tax for the tax year reduced by the amount which would be the net minimum tax if the only item of tax preference taken into account was that described in paragraph (6) of section 57(a) of the Internal Revenue Code.

89 Acts, ch 251, §20-22 SF 154; 89 Acts, ch 285, §5 SF 186

Former subsection 8 stricken in 1989 Code Supplement per repeal January 1, 1989; 87 Acts, ch 22, §20  
1989 amendments to subsections 1 and 2 retroactive to January 1, 1989, for tax years beginning on or after that date;  
89 Acts, ch 251, §40 SF 154

1989 amendment adding subsection 7 applies retroactively to January 1, 1987, for tax years beginning on or after that date; 89 Acts, ch 285, §11 SF 186

Subsection 1 amended

Subsection 2, unnumbered paragraph 1 amended

Former subsection 6 stricken and subsection 7 renumbered as 6

NEW subsection 7

#### **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 sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraphs "a", "b", and "c" who were hired for the first time by the taxpayer during the tax year for work done in this state:

a. 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.

13. Subtract the interest earned from bonds and notes issued by the agricultural development authority as provided in section 175.17, subsection 10, to the extent the interest is included in federal taxable income.

89 Acts, ch 175, §3 SF 423; 89 Acts, ch 225, §20, 21 HF 780

1989 amendments to subsection 6 apply retroactively to January 1, 1989, for tax years beginning on or after that date;

89 Acts, ch 225, §33 HF 780

Subsection 6, unnumbered paragraph 1 and paragraphs a, b, and c stricken and rewritten

NEW subsection 13

#### 422.36 Returns.

1. A corporation shall make a return and the return shall be signed by the president or other duly authorized officer in accordance with forms and rules prescribed by the director. Before a corporation is dissolved and its assets distributed it shall make a return for settlement of the tax for 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.

89 Acts, ch 251, §23 SF 154  
Subsection 1 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 and services rendered, furnished, or performed, which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state.

2. The gross receipts from the sales, furnishing, or service of transportation service except the rental of recreational vehicles or recreational boats, 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". However, this exemption does not apply to aircraft.

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 or aircraft where the fuel tax has been imposed and paid and no refund has been or will be allowed and the gross receipts from the sales of 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, or in the consumer rental purchase business if the property is to be utilized in a transaction involving a consumer rental purchase agreement as defined in section 537.3604, subsection 8, and the leasing or consumer rental of the property is subject to taxation under this division. If tangible personal property exempt under this subsection is made use of for any purpose other than leasing, renting, or consumer rental purchase, the person claiming the exemption under this subsection is liable for the tax that

would have been due except for this subsection. The tax shall be computed upon the original purchase price. The aggregate of the tax paid on the leasing, renting, or rental purchase of such tangible personal property, not to exceed the amount of the sales tax owed, shall be credited against the tax. This sales tax is in addition to any sales or use tax that may be imposed as a result of the disposal of such tangible personal property.

19. The gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping paper, twine, bag, bottle, shipping case, or other similar article or receptacle sold to manufacturers for the purpose of packaging or facilitating the transportation of tangible personal property or transferred in association with the maintenance or repair of fabric or clothing.\*

19A. The gross receipts from the sale of degradable, as defined in section 455B.301, subsection 16, property which is a container, carton, packaging case, wrapping paper, bag, bottle, shipping carton, or other similar article or receptacle sold to retailers for the purpose of point-of-sale packaging or for facilitating the transportation of tangible personal property sold at retail or transferred in association with the maintenance or repair of fabric or clothing. For the purpose of this subsection and subsection 19B, "point-of-sale" means the point at which payment is exchanged for tangible personal property.\*

19B. The gross receipts from the sale of property which is a container, carton, packaging case, wrapping paper, bag, bottle, shipping carton, or other similar article or receptacle sold to retailers for the purpose of nonpoint-of-sale packaging.\*

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 licensed by the department of human services pursuant to chapter 237, other than those maintained by individuals as defined in section 237.1, subsection 7.

c. Rehabilitation facilities that provide accredited rehabilitation services to persons with disabilities which are accredited by the commission on accreditation of rehabilitation facilities or the accreditation council for services for 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.

e. Community health centers as defined in 42 U.S.C.A. §254c and migrant health centers as defined in 42 U.S.C.A. §254b.

23. The gross receipts from the sales of special fuel for diesel engines consumed or used in the operation of ships, barges, or waterborne vessels which are used primarily in or for the transportation of property or cargo, or the conveyance of persons for hire on rivers bordering on the state if the fuel is delivered by the seller to the purchaser's barge, ship, or waterborne vessel while it is afloat upon such a river.

24. The gross receipts from the rental of motion picture films, video and audio tapes, video and audio discs, records, photos, copy, scripts or other media used for the purpose of transmitting that which can be seen, heard or read, if either of the following conditions are met:

a. The lessee imposes a charge for the viewing or the rental of such media and the charge for the viewing or the rental is subject to taxation under this division or chapter 423.

b. The lessee broadcasts the contents of such media for public viewing or listening.

The exemption provided for in this subsection applies to all payments on or after July 1, 1984.

25. The gross receipts from services rendered, furnished or performed by specialized flying implements of husbandry used for agricultural aerial spraying and aerial commercial and charter transportation services.

26. The gross receipts from the sale or rental of farm machinery and equipment, including replacement parts, if the following conditions are met:

a. The farm machinery and equipment shall be directly and primarily used in production of agricultural products.

b. The farm machinery and equipment shall constitute self-propelled implements or implements customarily drawn or attached to self-propelled implements or the farm machinery or equipment is a grain dryer.

c. The replacement part is essential to any repair or reconstruction necessary to the farm machinery's or equipment's exempt use in the production of agricultural products.

Vehicles subject to registration, as defined in section 423.1, or replacement parts for such vehicles, shall not be eligible for this exemption.

27. 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, or in the recycling or reprocessing of waste products. 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. This paragraph does not apply to machinery and equipment used in the recycling or reprocessing of waste products qualifying for an exemption under paragraph "a".

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.

36. Gross receipts from the sale of tangible personal property to a nonprofit organization which was organized for the purpose of lending the tangible personal property to the general public for use by them for nonprofit purposes.

37. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to nonprofit legal aid organizations.

38. The gross receipts from the sale of aircraft for use in a scheduled interstate federal aviation administration certificated air carrier operation.

39. The gross receipts from the sale or rental of farm machinery and equipment, including replacement parts, if all of the following conditions are met:

a. The implement, machinery, or equipment is directly and primarily used in livestock or dairy production.

b. The implement is not a self-propelled implement or implement customarily drawn or attached to self-propelled implements.

c. The replacement part is essential to any repair or reconstruction necessary to the farm machinery's or equipment's exempt use in livestock or dairy production.

40. The gross receipts from the sale of a modular home, as defined in section 135D.1, to the extent of the portion of the purchase price of the modular home which is not attributable to the cost of the tangible personal property used in the processing of the modular home. For purposes of this exemption, the portion of the purchase price which is not attributable to the cost of the tangible personal property used in the processing of the modular home is forty percent.

41. The gross receipts from the sale of motion picture films, video and audio tapes, video and audio discs and records, or other media which can be seen, heard, or read, to a person regularly engaged in the business of leasing, renting, or selling this property if the ultimate leasing, renting, or selling of the property is subject to tax under this division.

The exemption provided in this subsection is retroactive to July 1, 1984.

42. The gross receipts from the sale or rental of irrigation equipment used in farming operations.

89 Acts, ch 147, §1 SF 213; 89 Acts, ch 232, §1 HF 770; 89 Acts, ch 259, §1 SF 215; 89 Acts, ch 272, §26 HF 753; 89 Acts, ch 304, §602 SF 538

\*Effective date of 1988 amendments to subsection 19 striking references to sales to retailers and new subsections 19A and 19B is to be established by rule of laboratory division of the department of agriculture and land stewardship upon determination that degradable products are available to a degree which makes compliance reasonably possible; 88 Acts, ch 1182, §6; 89 Acts, ch 83, §86 SF 112

Subsections 18 and 27 amended

Subsection 22, paragraph b amended

NEW subsections 41 and 42

### 422.51 Return of gross receipts.

1. Each person subject to sections 422.52 and 422.53 and in accordance with the provisions thereof shall, on or before the last day of the month following the close of each calendar quarter during which such person is or has become or ceased being subject to the provisions of such sections, make, sign, and file a return for such calendar quarter in such form as may be required. Such returns shall show information relating to gross receipts including goods, wares, and services converted to the use of such person, the amounts of gross receipts excluded and exempt from the tax, the receipts subject to tax, a calculation of tax due, and such other information for the period covered by the return as may be required. Persons required to file, or committed to file by reason of voluntary action or by order of the department, monthly deposits of taxes due under this division shall be entitled to take credit against the total quarterly amount of tax due such amount as shall have been deposited by such persons during such calendar quarter. The balance remaining due after such credit for monthly deposits shall be entered on the return; provided, however, that such person may be granted an extension of time not exceeding thirty days for filing such quarterly return, upon a proper showing of necessity therefor. If such extension be granted such person shall have paid by the twentieth day of the month following the close of such quarter ninety percent of the estimated tax due.

2. If necessary or advisable in order to insure the payment of the tax imposed by this division, the director may require returns and payment of the tax to be made for other than quarterly periods, the provisions of section 422.52 or elsewhere to the contrary notwithstanding.

3. Returns shall be signed by the retailer or the retailer's authorized agent and must be certified by the retailer to be correct in accordance with forms and rules prescribed by the director.

4. If it is reasonably expected, as determined by rules prescribed by the director, that a retailer's annual tax liability will not exceed one hundred twenty dollars for a calendar year, the retailer may request and the director may grant permission, in lieu of the quarterly filing requirement of subsection 1 of this section and the remitting requirements of section 422.52, to file the return required under this section and remit the sales tax due on a calendar year basis. The return and tax are due and payable no later than January 31 following each calendar year in which the retailer carried on business.

89 Acts, ch 251, §24 SF 154  
Subsection 3 amended

#### **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 "c" or subsection 4, paragraph "b" or "d" are applicable.

*b.* If any retailer subject to this division sells the retailer's business or stock of goods or quits the business, the retailer shall prepare a final return and pay all tax due within the time required by law. The immediate successor to the retailer, if any, shall withhold sufficient of the purchase price, in money or money's worth, to pay the amount of delinquent tax, interest or penalty due and unpaid. If the immediate successor of the business or stock of goods intentionally fails to withhold the amount due from the purchase price as provided in this paragraph, the immediate successor is personally liable for the payment of the delinquent taxes, interest and penalty accrued and unpaid on account of the operation of the business by the immediate former retailer, except when the purchase is made in good faith as provided in section 421.28. However, a person foreclosing on a valid security interest or retaking possession of premises under a valid lease is not an "immediate successor" for purposes of this paragraph. The department may waive the liability of the immediate successor under this paragraph if the immediate successor exercised good faith in establishing the amount of the previous liability.

c. A person sponsoring a flea market, or a craft, antique, coin, or stamp show or similar event shall obtain from every retailer selling tangible personal property or taxable services at the event proof that the retailer possesses a valid sales tax permit or secure from the retailer a statement, taken in good faith, that property or services offered for sale are not subject to sales tax. Failure to do so renders a sponsor of the event liable for payment of any sales tax, interest and penalty due and owing from any retailer selling property or services at the event. Sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58 and 422.59 apply to the sponsors. For purposes of this paragraph a person sponsoring a flea market, or a craft, antique, coin or stamp show or similar event does not include an organization which sponsors an event less than three times a year or a state, county or district agricultural fair.

7. The tax on gross receipts from the sale or rental of tangible personal property under a consumer rental purchase agreement as defined in section 537.3604, subsection 8, is payable in the tax period of receipt.

8. If an amount of tax represented by a retailer to a consumer or user as constituting tax due is computed upon gross receipts that are not taxable or the amount represented is in excess of the actual taxable amount and the amount represented is actually paid by the consumer or user to the retailer, the excess amount of tax paid shall be returned to the consumer or user upon notification to the retailer by the department or by the consumer or user that an excess payment exists. If the retailer fails to make a return, the amount which the consumer or user has paid to the retailer shall be remitted by the retailer to the department.

89 Acts, ch 232, §2 HF 770; 89 Acts, ch 251, §25 SF 154  
NEW subsections 7 and 8

#### **422.60 Imposition of tax—credit.**

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.

3. a. There is allowed as a credit against the tax determined in section 422.63 for a tax year an amount equal to the minimum tax credit for that tax year.

The minimum tax credit for a tax year is the excess, if any, of the adjusted net minimum tax imposed for all prior tax years beginning on or after January 1, 1987, over the amount allowable as a credit under this subsection for those prior tax years.

b. The allowable credit under paragraph "a" for a tax year shall not exceed the excess, if any, of the tax determined in section 422.63 over the state alternative minimum tax as determined in subsection 2.

The net minimum tax for a tax year is the excess, if any, of the tax determined in subsection 2 for the tax year over the tax determined in section 422.63 for the tax year.

The adjusted net minimum tax for a tax year is the net minimum tax for the tax year reduced by the amount which would be the net minimum tax if the only item of tax preference taken into account was that described in paragraph (6) of section 57(a) of the Internal Revenue Code.

89 Acts, ch 285, §6 SF 186  
1989 amendment adding subsection 3 applies retroactively to January 1, 1987, for tax years beginning on or after that date; 89 Acts, ch 285, §11  
NEW subsection 3

#### 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 state bank chartered under the laws of any other state, a national banking association, a trust company, a federally chartered savings and loan association, an out-of-state state chartered savings bank, a financial institution chartered by the federal home loan bank board, a non-Iowa chartered savings and loan association, 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.

89 Acts, ch 285, §7 SF 186  
Subsection 1 amended

**422.63A United community bank office franchise tax treatment.**

A united community bank established pursuant to section 524.1213 shall pay the franchise tax due under this division on behalf of itself and its united community bank offices in the same manner and on the same basis as would have been paid if the merger or consolidation authorized by section 524.1213 had not occurred. The department shall adopt rules to implement this section.

89 Acts, ch 172, §1 HF 98  
NEW section

**422.69 Moneys paid and deposited.**

1. All fees, taxes, interest and penalties imposed under this chapter shall be paid to the department in the form of remittances payable to the state treasurer and the department shall transmit each payment daily to the state treasurer.

2. Unless otherwise provided the fees, taxes, interest and penalties collected under this chapter shall be credited to the general fund.

3. The director shall estimate the amount of tax revenues collected as a result of the sales tax imposed under section 422.43, subsection 12, and shall deposit a like amount in a "GAAP escrow account" to be created within the general fund. Amounts deposited in the GAAP escrow account shall be used to implement generally accepted accounting principles as required in 1986 Iowa Acts, chapter 1245, section 2046, as amended by 1986 Iowa Acts, chapter 1238, section 59.

4. The director shall estimate the amount of state corporate income tax revenues collected as a result of the United States supreme court decision holding that the federal windfall profits tax is not a federal income tax and shall deposit a like amount in the Iowa resources enhancement and protection fund created under section 455A.18.

89 Acts, ch 236, §15 HF 769

Subsection 4 applies to state corporate income taxes collected on or after May 27, 1989; 89 Acts, ch 236, §17, 18 HF 769  
NEW subsection 4

**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 terrorist 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.

7. 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 November 10, 1989, if the taxpayer's federal income tax was forgiven under section 170(m) of the Internal Revenue Code because eighty percent of the taxpayer's payment to a college or university was allowed as a charitable contribution since the payment entitled the taxpayer to purchase tickets to an athletic event of the college or university. To the extent the federal income tax was forgiven for the tax year under section 170(m) of the Internal Revenue Code, the Iowa income tax is also forgiven.

89 Acts, ch 285, §8 SF 186  
NEW subsection 7

#### **422.85 Imposition of estimated tax.**

A taxpayer subject to the tax imposed by sections 422.33 and 422.60 shall make payments of estimated tax for the taxable year if the amount of tax payable, less credits, can reasonably be expected to be more than one thousand dollars for the taxable year. For purposes of this division, "estimated tax" means the amount which the taxpayer estimates to be the tax due and payable under division III or V of this chapter for the taxable year.

89 Acts, ch 251, §26 SF 154

1989 amendment effective January 1, 1990, for tax years beginning on or after that date; 89 Acts, ch 251, §41 SF 154  
Section amended

#### **422.86 Payment of estimated tax.**

A taxpayer required to pay estimated tax under section 422.85 shall pay the estimated tax in accordance with the following schedule:

1. If it is first determined that the estimated tax will be greater than one thousand dollars on or before the last day of the fourth month of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid not later than the last day of the fourth month of the taxable year. The second and third installments shall be paid not later than the last day of the sixth and ninth months of the taxable year, and the final installment shall be paid on or before the last day of the taxable year.

2. If it is first determined that the estimated tax will be greater than one thousand dollars after the last day of the fourth month but not later than the last day of the sixth month of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid not later than the last day of the sixth month of the taxable year. The second installment shall be paid on or before the last day of the ninth month of the taxable year and the third installment shall be paid on or before the last day of the taxable year.

3. If it is first determined that the estimated tax will be greater than one thousand dollars after the last day of the sixth month but not later than the last day of the ninth month of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid not later than the last day of the ninth month and the second installment shall be paid on or before the last day of the taxable year.

4. If it is first determined that the estimated tax will be greater than one thousand dollars after the last day of the ninth month of the taxable year, the estimated tax shall be paid in full on or before the last day of the taxable year.

5. If, after paying any installment of estimated tax, the taxpayer makes a new estimate, the remaining installments shall be ratably adjusted to reflect the increase or decrease in the estimated tax.

89 Acts, ch 251, §27 SF 154

1989 amendment effective January 1, 1990, for tax years beginning on or after that date; 89 Acts, ch 251, §41 SF 154

Section amended

#### **422.91 Credit for estimated tax.**

Any amount of estimated tax paid is a credit against the amount of tax due on a final, completed return, and any overpayment of five dollars or more shall be refunded to the taxpayer with interest, the interest to begin to accrue on the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the latest, at the rate established under section 421.7, and the return constitutes a claim for refund for this purpose. Amounts less than five dollars shall be refunded to the taxpayer only upon written application in accordance with section 422.73, and only if the application is filed within twelve months after the due date for the return.

In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on its final, completed return for the taxable year credited to the tax liability for the following taxable year.

89 Acts, ch 251, §28 SF 154

1989 amendment effective January 1, 1990, for tax years beginning on or after that date; 89 acts, ch 251, §41 SF 154

Unnumbered paragraph 1 amended

#### **422.92 Rules for short taxable year.**

A taxpayer having a taxable year of less than twelve months shall pay estimated tax under rules adopted by the director.

89 Acts, ch 251, §29 SF 154

1989 amendment effective January 1, 1990, for tax years beginning on or after that date; 89 Acts, ch 251, §41 SF 154

Section amended

## 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 and the guests of a religious institution if the property is exempt under section 427.1, subsection 9, and the purpose of renting is to provide a place for a religious retreat or function and not a place for transient guests generally. 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 forty-five 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 levied shall be in addition to any state sales tax imposed under section 422.43. 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, 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 this paragraph, the director shall provide for quarterly filing of returns as prescribed in section 422.51 and for other than quarterly filing of returns as prescribed in section 422.51, subsection 2. 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.

89 Acts, ch 251, §30 SF 154; 89 Acts, ch 294, §1 SF 185  
Unnumbered paragraphs 1 and 7 amended

## CHAPTER 422B

### LOCAL OPTION TAXES

#### 422B.1 Authorization—election—imposition and repeal.

1. A county may impose by ordinance of the board of supervisors local option taxes authorized by this chapter, subject to this section.

2. A local option tax shall be imposed only after an election at which a majority of those voting on the question favors imposition and shall then be imposed until repealed as provided in subsection 5, paragraph "a". If the tax is a local vehicle tax imposed by a county, it shall apply to all incorporated and unincorporated areas of the county. If the tax is a local sales and services tax imposed by a county, it shall only apply to those incorporated areas and the unincorporated area of that county in which a majority of those voting in the area on the tax favors its imposition. For purposes of the local sales and services tax, all cities contiguous to each other shall be treated as part of one incorporated area and the tax would be imposed in each of those contiguous cities only if the majority of those voting in the total area covered by the contiguous cities favors its imposition. For purposes of the local sales and services tax, a city is not contiguous to another city if the only road access between the two cities is through another state.

3. a. A county board of supervisors shall direct within thirty days the county commissioner of elections to submit the question of imposition of a local vehicle tax or a local sales and services tax to the qualified electors of the incorporated and unincorporated areas of the county upon receipt of a petition, requesting imposition of a local vehicle tax or a local sales and services tax, signed by eligible electors of the whole county equal in number to five percent of the persons in the whole county who voted at the last preceding state general election. In the case of a local vehicle tax, the petition requesting imposition shall specify the rate of tax and the classes, if any, that are to be exempt. If more than one valid petition is received, the earliest received petition shall be used.

b. The question of the imposition of a local sales and services tax shall be submitted to the qualified electors of the incorporated and unincorporated areas of the county upon receipt by the county commissioner of elections of the motion or motions, requesting such submission, adopted by the governing body or bodies of the city or cities located within the county or of the county, for the unincorporated areas of the county, representing at least one half of the population of the county. Upon adoption of such motion, the governing body of the city or county, for the unincorporated areas, shall submit the motion to the county commissioner of elections and in the case of the governing body of the city shall notify the board of supervisors of the adoption of the motion. The county commissioner of elections shall keep a file on all the motions received and, upon reaching the population requirements, shall publish notice of the ballot proposition concerning the imposition of the local sales and services tax. A motion ceases to be valid at the time of the holding of the regular election for the election of members of the

governing body which adopted the motion. The county commissioner of elections shall eliminate from the file any motion that ceases to be valid. The manner provided under this paragraph for the submission of the question of imposition of a local sales and services tax is an alternative to the manner provided in paragraph "a".

4. The county commissioner of elections shall submit the question of imposition of a local option tax at a state general election or at a special election held at any time other than the time of a city regular election which may not be held sooner than sixty days after publication of notice of the ballot proposition. The ballot proposition shall specify the type and rate of tax and in the case of a vehicle tax the classes that will be exempt and in the case of a local sales and services tax the date it will be imposed. The ballot proposition shall also specify the approximate amount of local option tax revenues that will be used for property tax relief and shall contain a statement as to the specific purpose or purposes for which the revenues shall otherwise be expended. The rate of the vehicle tax shall be in increments of one dollar per vehicle as set by the petition seeking to impose the tax. The rate of a local sales and services tax shall not be more than one percent as set by the governing body. The state commissioner of elections shall establish by rule the form for the ballot proposition which form shall be uniform throughout the state.

5. a. If a majority of those voting on the question of imposition of a local option tax favor imposition of a local option tax, the governing body of that county shall impose the tax at the rate specified for an unlimited period. However, in the case of a local sales and services tax, the county shall not impose the tax in any incorporated area or the unincorporated area if the majority of those voting on the tax in that area did not favor its imposition. For purposes of the local sales and services tax, all cities contiguous to each other shall be treated as part of one incorporated area and the tax would be imposed in each of those contiguous cities only if the majority of those voting in the total area covered by the contiguous cities favor its imposition. The local option tax may be repealed or the rate increased or decreased only after an election at which a majority of those voting on the question of repeal or rate change favor the repeal or rate change. The election at which the question of repeal or rate change is offered shall be called and held in the same manner and under the same conditions as provided in subsections 3 and 4 for the election on the imposition of the local option tax. However, in the case of a local sales and services tax where the tax has not been imposed countywide, the question of repeal or imposition shall be voted on only by the qualified electors of the areas of the county where the tax has been imposed or has not been imposed, as appropriate.

b. Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, or change in the rate of a local option tax, the governing body shall give written notice to the director of revenue and finance or, in the case of a local vehicle tax, to the director of the department of transportation, of the result of the election.

6. More than one of the authorized local option taxes may be submitted at a single election and the different taxes shall be separately implemented as provided in this section.

7. Local option taxes authorized to be imposed as provided in this chapter are a local sales and services tax and a local vehicle tax. The rate of the tax shall be in increments of one dollar per vehicle for a vehicle tax as set on the petition seeking to impose the vehicle tax. The rate of a local sales and services tax shall not be more than one percent as set by the governing body.

8. In a county that has imposed a local option sales and services tax, the board of supervisors shall, notwithstanding any contrary provision of this chapter, repeal the local option sales and services tax in the unincorporated areas or in an

incorporated city area in which the tax has been imposed upon adoption of its own motion for repeal in the unincorporated areas or upon receipt of a motion adopted by the governing body of that incorporated city area requesting repeal. The board of supervisors shall repeal the local option sales and services tax effective at the end of the calendar quarter during which it adopted the repeal motion or the motion for the repeal was received. For purposes of this subsection, incorporated city area includes an incorporated city which is contiguous to another incorporated city.

89 Acts, ch 146, §1 SF 167; 89 Acts, ch 276, §1 HF 271  
 Subsection 2 amended  
 NEW subsection 8

#### **422B.8 Local sales and services tax.**

A local sales and services tax at the rate of not more than one percent may be imposed by a county on the gross receipts taxed by the state under chapter 422, division IV. A local sales and services tax shall be imposed on the same basis as the state sales and services tax and may not be imposed on the sale of any property or on any service not taxed by the state, except the tax shall not be imposed on the gross receipts from the sale of motor fuel or special fuel as defined in chapter 324, on the gross receipts from the rental of rooms, apartments, or sleeping quarters which are taxed under chapter 422A during the period the hotel and motel tax is imposed, on the gross receipts from the sale of natural gas or electric energy in a city or county where the gross receipts are subject to a franchise fee or user fee during the period the franchise or user fee is imposed, on the gross receipts upon which sales tax is imposed only under section 422.43, subsection 12, on the gross receipts from the sale of equipment by the state department of transportation, and on the gross receipts from the sale of a lottery ticket or share in a lottery game conducted pursuant to chapter 99E. A local sales and services tax is applicable to transactions within those incorporated and unincorporated areas of the county where it is imposed and shall be collected by all persons required to collect state gross receipts taxes. All cities contiguous to each other shall be treated as part of one incorporated area and the tax would be imposed in each of those contiguous cities only if the majority of those voting in the total area covered by the contiguous cities favor its imposition.

The amount of the sale, for purposes of determining the amount of the local sales and services tax, does not include the amount of any state gross receipts taxes.

A tax permit other than the state tax permit required under section 422.53 shall not be required by local authorities.

89 Acts, ch 276, §2 HF 271  
 Unnumbered paragraph 1 amended

#### **422B.9 Administration.**

A local sales and services tax shall be imposed either January 1, April 1, July 1 or October 1 following the notification of the director of revenue and finance.

A local sales and services tax shall be repealed only on March 31, June 30, September 30, or December 31. However, a local sales and services tax shall not be repealed before the tax has been in effect for one year. At least forty days before the imposition or repeal of the tax, a county shall provide notice of the action by certified mail to the director of revenue and finance.

The director of revenue and finance shall administer a local sales and services tax as nearly as possible in conjunction with the administration of state gross receipts tax laws. The director shall provide appropriate forms or provide on the regular state tax forms for reporting local sales and services tax liability.

The ordinance of a county board of supervisors imposing a local sales and services tax shall adopt by reference the applicable provisions of the appropriate sections of chapter 422, division IV. All powers and requirements of the director to administer the state gross receipts tax law are applicable to the administration of

a local sales and services tax law, including but not limited to, 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. Local officials shall confer with the director of revenue and finance for assistance in drafting the ordinance imposing a local sales and services tax. A certified copy of the ordinance shall be filed with the director as soon as possible after passage.

The director, in consultation with local officials, shall collect and account for a local sales and services tax. The director shall certify each quarter the amount of local sales and services tax receipts and any interest and penalties to be credited to the "local sales and services tax fund" established in the office of the treasurer of state.

All local tax moneys and interest and penalties received or refunded one hundred eighty days or more after the date on which the county repeals its local sales and services tax shall be deposited in or withdrawn from the state general fund.

89 Acts, ch 276, §3 HF 271  
1989 amendment to unnumbered paragraph 2 applies to local sales and services taxes that are in effect on or after January 1, 1990; 89 Acts, ch 276, §5 HF 271  
Unnumbered paragraph 2 amended

#### **422B.10 Payment to local governments.**

1. The director shall credit the local sales and services tax receipts and interest and penalties from a county to the county's account in the local sales and services tax fund. If the director is unable to determine from which county any of the receipts were collected, those receipts shall be allocated amongst the possible counties based on allocation rules adopted by the director.

2. a. The director of revenue and finance within fifteen days of the beginning of each fiscal year shall send to each city or county where the local option tax is imposed, an estimate of the amount of tax moneys each city or county will receive for the year and for each quarter of the year. At the end of each quarter, the director may revise the estimates for the year and remaining quarters.

b. The director of revenue and finance shall remit ninety percent of the estimate tax receipts for the city or county to the city or county after the end of each quarter no later than the following dates: November 10, February 10, May 10, and August 10.

c. The director of revenue and finance shall remit a final payment of the remainder of tax moneys due the city or county for the fiscal year before the due date for the payment of the first quarter of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the first payment of the new fiscal year shall be adjusted to reflect any overpayment.

3. Seventy-five percent of each county's account shall be remitted on the basis of the county's population residing in the unincorporated area where the tax was imposed and those incorporated areas where the tax was imposed as follows:

a. To the board of supervisors a pro rata share based upon the percentage of the above population of the county residing in the unincorporated area of the county where the tax was imposed according to the most recent certified federal census.

b. To each city in the county where the tax was imposed a pro rata share based upon the percentage of the city's population residing in the county to the above population of the county according to the most recent certified federal census.

4. Twenty-five percent of each county's account shall be remitted based on the sum of property tax dollars levied by the board of supervisors if the tax was imposed in the unincorporated areas and each city in the county where the tax was imposed during the three-year period beginning July 1, 1982 and ending June 30, 1985 as follows:

a. To the board of supervisors a pro rata share based upon the percentage of the total property tax dollars levied by the board of supervisors during the above three-year period.

b. To each city council where the tax was imposed a pro rata share based upon the percentage of property tax dollars levied by the city during the above three-year period of the above total property tax dollars levied by the board of supervisors and each city where the tax was imposed during the above three-year period.

5. Local sales and services tax moneys received by a city or county may be expended for any lawful purpose of the city or county.

89 Acts, ch 277, §1, 2 HF 751  
 Subsection 1 amended  
 Subsection 2 stricken and rewritten

## CHAPTER 423

### USE TAX

#### 423.6 How collected.

The tax herein imposed shall be collected in the following manner:

1. The tax upon the use of all vehicles subject to registration or subject only to the issuance of a certificate of title shall be collected by the county treasurer or the state department of transportation pursuant to section 423.7. The county treasurer shall retain one dollar from each tax payment collected, to be credited to the county general fund.

2. The tax upon the use of all tangible personal property other than that enumerated in subsection 1 hereof, which is sold by a retailer maintaining a place of business in this state, or by such other retailer as the director shall authorize pursuant to section 423.10, shall be collected by such retailer and remitted to the department, pursuant to the provisions of sections 423.9 to 423.13.

3. The tax upon the use of all tangible personal property not paid pursuant to subsections 1 and 2 hereof shall be paid to the department directly by any person using such property within this state, pursuant to the provisions of section 423.14.

4. The tax on services imposed in section 423.2 shall be collected, remitted, and paid to the department of revenue and finance of this state in the corresponding manner as use tax on tangible personal property is collected, remitted and paid under provisions of this chapter.

89 Acts, ch 174, §1 SF 132  
 Subsection 1 amended

#### 423.13 Payment to department—successor liability.

A permit holder required or authorized, pursuant to section 423.9 or 423.10, to collect or pay the tax imposed, shall remit to the department the amount of tax, on or before the last day of the month following each calendar quarterly period. However, a retailer who collects or owes more than fifteen hundred dollars in use taxes in a month shall deposit with the department or in a depository authorized by law and designated by the director, the amount collected or owed, 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. At that time, the retailer shall file with the department a return for the preceding quarterly period in the form prescribed by the director showing the sales price of the tangible personal property sold by the retailer during the preceding quarterly period, the use of which is subject to the tax imposed by this chapter, and other information the director deems necessary for the proper administration of this chapter. The return shall be accompanied by a remittance of the tax for the period covered by the return. If necessary in order to

ensure payment to the state of the tax, the director may in any or all cases require returns and payments to be made for other than quarterly periods. The director may, upon request and a proper showing of necessity, grant an extension of time not to exceed thirty days for making any return and payment. Returns shall be signed, in accordance with forms and rules prescribed by the director, by the retailer or the retailer's authorized agent, and shall be certified by the retailer or agent to be correct.

If it is reasonably expected, as determined by rules prescribed by the director, that a retailer's annual use tax liability will not exceed one hundred twenty dollars for a calendar year, the retailer may request and the director may grant permission to the retailer, in lieu of the quarterly filing and remitting requirements of the first paragraph of this section, to file the return required by and remit the use tax due under this section on a calendar year basis. The return and tax are due and payable no later than January 31 following each calendar year in which the retailer carries on business.

If a retailer 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 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.

89 Acts, ch 251, §31, 32 SF 154  
Unnumbered paragraph 1 amended  
NEW unnumbered paragraph 2

## CHAPTER 424

### ENVIRONMENTAL PROTECTION CHARGE ON PETROLEUM DIMINUTION

Legislative findings; legislative intent; conditions upon finding of invalidity;  
89 Acts, ch 131, §1, 2, 59 HF 447

#### 424.1 Title—director's authority.

1. This chapter is entitled "Environmental Protection Charge on Petroleum Diminution".
2. The director's and the department's authority and power under chapter 421 and other provisions of the tax code relevant to administration apply to this chapter, and the charge imposed under this chapter is imposed as if the charge were a tax within the meaning of that chapter or provision.
3. The director shall enter into a contract or agreement with the board to provide assistance requested by the board. Policy issues arising under this chapter or chapter 455G shall be determined by the board, and the board shall be joined as a real party in interest when a policy issue is raised.
4. The board shall retain rulemaking authority, but may contract with the department for assistance in drafting rules. The board shall retain contested case

jurisdiction over any challenge to the diminution rate or cost factor. The department shall conduct all other contested cases and be responsible for other agency action in connection with the environmental protection charge imposed under this chapter.

5. The board shall reimburse the department of revenue and finance by contract for the reasonable cost of administration of the environmental protection charge imposed under this chapter and for other duties delegated to the department or to the director by the board.

89 Acts, ch 131, §12, 13 HF 447  
See Code editor's note to §220.151  
NEW section

#### 424.2 Definitions.

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

1. "Board" means the Iowa comprehensive petroleum underground storage tank board.

2. "Charge" means the environmental protection charge imposed upon petroleum diminution pursuant to section 424.3.

3. "Charge payer" means a depositor, receiver, or tank owner or operator obligated to pay the environmental protection charge under this chapter.

4. "Department" means the department of revenue and finance.

5. "Depositor" means the person who deposits petroleum into a tank subject to regulation under chapter 455G.

6. "Diminution" means the petroleum released into the environment prior to its intended beneficial use.

7. "Director" means the director of revenue and finance.

8. "Fund" means the Iowa comprehensive petroleum underground storage tank fund.

9. "Owner or operator" means "owner or operator" as used in chapter 455G.

10. "Petroleum" means petroleum as defined in section 455G.2.

11. "Receiver" means, if the owner and operator are not the same person, the person who, under a contract between the owner and operator, is responsible for payment for petroleum deposited into a tank; and if the owner and operator of a tank are the same person, means the owner.

12. "Tank" means an underground storage tank subject to regulation under chapter 455G.

89 Acts, ch 131, §14 HF 447  
NEW section

#### 424.3 Environmental protection charge imposed upon petroleum diminution.

1. An environmental protection charge is imposed upon diminution. A depositor shall collect from the receiver of petroleum deposited into a tank, the environmental protection charge imposed under this section on diminution each time petroleum is deposited into the tank, and pay the charge to the department as directed by this chapter.

2. The environmental protection charge shall be equal to the total volume of petroleum deposited in a tank multiplied by the diminution rate multiplied by the cost factor.

3. The diminution rate is one-tenth of one percent.

4. Diminution equals total volume of petroleum deposited multiplied by the diminution rate established in subsection 3.

5. The cost factor is an amount per gallon of diminution determined by the board pursuant to this subsection. The board, after public hearing, may determine, or may adjust, the cost factor to an amount deemed sufficient by the board to maintain the financial soundness of the fund, but not to exceed an amount reasonably necessary to assure financial soundness, in light of known and

expected expenses, known and expected income from other sources, the volume of diminution presumed by law to occur, the debt service and reserve requirements for that portion of any bonds issued for the fund, and any other factors determined to be significant by the board, including economic reasonableness to owners and operators. The board may determine or adjust the cost factor at any time after May 5, 1989, but shall at minimum determine the cost factor at least once each fiscal year.

6. The cost factor shall not exceed an amount which is reasonably calculated to generate more than twelve million dollars in annual revenue from the charge, excluding penalties and interest, if any. If the board determines that to maintain the financial soundness of the fund the cost factor should be higher than allowed by the twelve million dollar cap on annual revenues, the board shall, on or before January 1 of each calendar year, make and deliver to the governor and the general assembly the board's certificate stating the sum per year required to maintain financial soundness of the fund. Within thirty days after the beginning of the session of the general assembly next following the delivery of the certificate, the governor may submit to both houses printed copies of a budget including the sum, if any, required to maintain the financial soundness of the fund, or other proposed legislative solutions to eliminate the shortfall.

7. The environmental protection charge shall be reduced or eliminated upon the later of fifteen years after May 5, 1989, or such time as the trust fund provided for under section 455G.9 is created, and is actuarially sound, and self-sustaining. The environmental protection charge may be reinstated as provided in section 455G.9, subsection 3.

89 Acts, ch 131, §15 HF 447  
NEW section

#### **424.4 Adding of charge.**

A depositor shall, as far as practicable, add the charge imposed under this chapter, or the average equivalent of the charge, to the depositor's sales price for the petroleum subject to the charge and when added such charge shall constitute a part of the depositor's price, shall be a debt from the receiver to the depositor until paid, and shall be recoverable at law in the same manner as other debts.

89 Acts, ch 131, §16 HF 447  
NEW section

#### **424.5 Depositor permits required—applications—revocation.**

1. It is unlawful for any person to deposit petroleum into a tank in this state, unless a depositor permit has been issued to that person under this section. A depositor shall file with the department an application for a permit. An application for a permit shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location or locations of the applicant's place of business, and any other information as the board may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of the person's authority.

2. The department may deny a permit to an applicant who is substantially delinquent in paying a tax or charge due, or the interest or penalty on the tax or charge, administered by the department at the time of application. If the applicant is a partnership, a permit may be denied if the partner is substantially delinquent in paying any delinquent tax or charge, penalty, or interest.

3. A permit is not assignable and is valid only for the person in whose name it is issued.

4. A permit issued under this chapter is valid and effective until revoked by the department.

5. If the holder of a permit fails to comply with any of the provisions of this chapter or any order or rule of the department, or rule or order of the board pursuant to this chapter, or is substantially delinquent in the payment of a tax or charge administered by the department or the interest or penalty on the tax or charge, the director may revoke the permit.

6. To revoke a permit the director shall serve notice as required by section 17A.18 to the permit holder informing that person of the director's intent to revoke the permit and of the permit holder's right to a hearing on the matter. If the permit holder petitions the director for a hearing on the proposed revocation, after giving ten days' notice of the time and place of the hearing in accordance with section 17A.18, subsection 3, the matter may be heard and a decision rendered. The director may restore permits after revocation. The director shall adopt rules setting forth the period of time a depositor must wait before a permit may be restored or a new permit may be issued. The waiting period shall not exceed ninety days from the date of the revocation of the permit.

89 Acts, ch 131, §17 HF 447  
NEW section

#### **424.6 Exemption certificates for receivers of petroleum underground storage tanks not subject to financial responsibility rules.**

1. The department of natural resources shall issue an exemption certificate in the form prescribed by the director of the department of natural resources to an applicant who is an owner or operator of a petroleum underground storage tank which is exempt, deferred, or excluded from regulation under chapter 455G, for that tank. The director of the department of natural resources shall revoke and require the return of an exemption certificate if the petroleum underground storage tank later becomes subject to chapter 455G pursuant to section 455G.1. A tank is subject to chapter 455G when the federal regulation subjecting that tank to financial responsibility becomes effective and not upon the effective compliance date unless the effective compliance date is the effective date of the regulation.

2. Liability for the charge is upon the depositor and the receiver unless the depositor takes in good faith from the receiver a valid exemption certificate and records the exemption certificate number and related transaction information required by the director and submits such information as part of the environmental protection charge return. If petroleum is deposited into a tank, pursuant to a valid exemption certificate which is taken in good faith by the depositor, and the receiver is liable for the charge, the receiver is solely liable for the charge and shall remit the charge directly to the department and this chapter applies to that receiver as if the receiver were a depositor.

3. A valid exemption certificate is an exemption certificate which is complete and correct according to the requirements of the director of the department of natural resources.

4. A valid exemption certificate is taken in good faith by the depositor when the depositor 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. A depositor has constructive notice of the classes of exempt, deferred, or excluded tanks. In order for a depositor to take a valid exemption certificate in good faith, the depositor 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.

5. If the circumstances change and the tank becomes subject to financial responsibility regulations, the tank owner or operator is liable solely for the charges and shall remit the charges directly to the department of revenue and finance pursuant to this chapter.

6. The board may waive the requirement for an exemption certificate for one or more classes of exempt, deferred, or excluded tanks, if in the board's judgment an exemption certificate is not required for effective and efficient collection of the charge. If an exemption certificate is not required for a class pursuant to this subsection, the depositor shall maintain and file such records and information as may be required by the director regarding deposits into a tank subject to the waiver.

89 Acts, ch 131, §18 HF 447  
NEW section

#### **424.7 Deposit of moneys—filing of environmental protection charge return—appropriation.**

1. A depositor shall, on or before the last day of the month following the close of each calendar quarter during which the depositor is or has become or ceased being subject to the provisions of section 424.3, make, sign, and file an environmental protection charge return for that calendar quarter in such form as may be required by the director. The return shall show information relating to the volume of petroleum deposited into tanks subject to the charge, and any claimed exemptions or exclusions from the charge, a calculation of charges due, and such other information for the period covered by the return as may be required by the director. The depositor may be granted an extension of time not exceeding thirty days for filing a quarterly return, upon a proper showing of necessity. If an extension is granted, the depositor shall have paid by the thirtieth day of the month following the close of the quarter ninety percent of the estimated charges due.

2. If necessary or advisable in order to ensure the payment of the charge imposed by this chapter, the director may require returns and payment of the charge to be made for other than quarterly periods.

3. Returns shall be signed by the depositor or the depositor's duly authorized agent, and must be duly certified by the depositor to be correct.

4. Upon receipt of a payment pursuant to this chapter, the department shall deposit the moneys into the fund created in section 455G.3, and the moneys so deposited are a continuing appropriation for expenditure under chapter 455G, and moneys so appropriated shall not be used for other purposes unless the appropriation is changed by the first session of a biennial general assembly.

89 Acts, ch 131, §19 HF 447  
NEW section

#### **424.8 Payment of environmental protection charge.**

1. The charge levied under this chapter is due and payable in calendar quarterly installments on or before the last day of the month following each quarterly period except as otherwise provided in this section.

2. Every permit holder at the time of making the return required hereunder, shall compute and pay to the department the charges due for the preceding period.

3. a. If a receiver fails to pay charges imposed by this chapter to the depositor required to collect the charge, then in addition to all of the rights, obligations, and remedies provided, the charge is payable by the receiver directly to the department, and this chapter applies to the receiver as if the receiver were a depositor.

b. If a depositor subject to this chapter sells the depositor's business or stock of petroleum or quits the business, the depositor shall prepare a final return and pay all charges due within the time required by law. The immediate successor to the depositor, if any, shall withhold a sufficient amount of the purchase price, in

money or money's worth, to pay the amount of delinquent charge, interest, or penalty due and unpaid. If the immediate successor of the business or stock of petroleum 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 charges, interest, and penalty accrued and unpaid on account of the operation of the business by the immediate predecessor depositor, except when the purchase is made in good faith as provided in section 424.6. 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.

89 Acts, ch 131, §20 HF 447  
NEW section

#### **424.9 Bond for environmental protection charge collection.**

The director, when necessary and advisable in order to secure the collection of the environmental protection charge imposed by section 424.3, may require a depositor to file a bond with the director. The bond shall assure collection by the department of the amount of the charge required to be collected or the amount actually collected by the depositor required to file the bond, whichever is greater. The bond shall be issued by a surety company authorized to conduct business in this state and approved by the commissioner of insurance as to solvency and responsibility, in an amount as the director may fix, to secure the payment of the charge, and penalty due or which may become due. In lieu of the bond, securities or cash shall be kept in the custody of the department and securities 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 charge and penalty due. Upon a sale, any surplus above the amounts due under this section shall be returned to the person who deposited the securities.

89 Acts, ch 131, §21 HF 447  
NEW section

#### **424.10 Failure to file return—incorrect return.**

1. As soon as practicable after a return is filed and in any event within five years after the return is filed the department shall examine it, assess and determine the charge due if the return is found to be incorrect, and give notice to the depositor of such assessment and determination as provided in subsection 2. The period for the examination and determination of the correct amount of the charge is unlimited in the case of a false or fraudulent return made with the intent to evade the charge or in the case of a failure to file a return. If the determination that a return is incorrect is the result of an audit of the books and records of the depositor, the charge, or additional charge, if any is found due, shall be assessed and determined and the notice to the depositor shall be given by the department within one year after the completion of the examination of the books and records.

2. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within twenty days after the return is required by notice from the department, the department shall determine the amount of charge due from such information as the department may be able to obtain and, if necessary, may estimate the charge on the basis of external indices or factors. The department shall give notice of such determination to the person liable for the charge. Such determination shall finally and irrevocably fix the charge 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 charge. 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 charge.

If a depositor's, receiver's, or other person's challenge relates to the diminution rate, the burden of proof upon the challenger shall only be satisfied by clear and convincing evidence.

3. If the amount paid is greater than the correct charge, penalty, and interest due, the department shall refund the excess, with interest after sixty days from the date of payment at the rate in effect under section 421.7, pursuant to rules prescribed by the director. However, the director shall not allow a claim for refund that has not been filed with the department within five years after the charge payment upon which a refund is claimed became due, or one year after the charge payment was made, whichever time is later. A determination by the department of the amount of charge, penalty, and interest due, or the amount of refund for any excess amount paid, is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within thirty days from the postmark date of the notice of determination of charge, penalty, and interest due or refund owing. The director shall grant a hearing, and upon hearing the director shall determine the correct charge, penalty, and interest due or refund owing, and notify the appellant of the decision by mail. The decision of the director is final unless the appellant seeks judicial review of the director's decision under section 424.13.

89 Acts, ch 131, §22 HF 447  
NEW section

#### **424.11 Environmental protection charge lien — collection — action authorized.**

Whenever a person liable to pay a charge refuses or neglects to pay the charge, the amount, including any interest, penalty, or addition to the charge, 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 that person.

The environmental protection charge lien shall attach at the time the charge becomes due and payable and shall continue for ten years from the time the lien attaches unless sooner released or otherwise discharged. The lien may be extended, within ten years from the date the lien attaches, by filing for record a notice with the appropriate county official of the appropriate county and from the time of such filing, the lien shall be extended to the property in such county for ten years, unless sooner released or otherwise discharged, with no limit on the number of extensions. The director shall charge off any account whose lien is allowed to lapse and may charge off any account and release the corresponding lien before the lien has lapsed if the director determines under uniform rules adopted by the board that the account is uncollectible or collection costs involved would warrant collection of the amount due.

In order to preserve the lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the director shall file with the recorder of the county in which the property is located a notice of the lien.

The county recorder of each county shall record an environmental protection charge lien in the "index of income tax liens".

The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve the notice, and shall immediately index the notice in the index book and record the lien in the manner provided for recording real estate mortgages, and the lien shall be effective from the time of its indexing.

The department 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 a charge as to which the director has filed notice with a county recorder, the director shall immediately file with the recorder a satisfaction of the charge and the recorder shall enter the satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

The department shall proceed, substantially as provided in this chapter, to collect all charges and penalties as soon as practicable after the same become delinquent, except that no property of the depositor shall be exempt from the payment of the charge. In the event service has not been made on a distress warrant by the officer to whom addressed within five days from the date the distress warrant was received by the officer, the authorized revenue agents of the department are hereby empowered to serve and make return of the warrant to the clerk of the district court of the county named in the distress warrant, and all subsequent procedure shall be in compliance with chapter 626.

The attorney general shall, upon the request of the director, bring an action at law or in equity, as the facts may justify, without bond, to enforce payment of any charges and penalties, and in such action the attorney general shall have the assistance of the county attorney of the county in which the action is pending.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the director or attorney general 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.

89 Acts, ch 131, §23 HF 447  
NEW section

#### **424.12 Records required.**

It shall be the duty of every depositor required to make a report and pay any charge under this chapter, to preserve such records as the director may require, and it shall be the duty of every depositor to preserve for a period of five years all invoices and other records; and all such books, invoices, and other records shall be open to examination at any time by the department, and shall be made available within this state for such examination upon reasonable notice when the director shall so order. When requested to do so by any person from whom a charge payer is seeking credit, or with whom the charge payer is negotiating the sale of any personal property, or by any other person having a legitimate interest in such information, the director, upon being satisfied that such a situation exists, shall inform such person as to the amount of unpaid charges due by the charge payer under the provisions of this chapter. The giving of such information under such circumstances shall not be deemed a violation of section 422.72 as applied to this chapter.

Section 422.72 applies to this chapter as if the environmental protection charge were a tax.

89 Acts, ch 131, §24 HF 447  
NEW section

#### **424.13 Judicial review.**

1. Judicial review of contested cases under this chapter may be sought in accordance with chapter 17A.

2. 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, in penalty at least double the amount of charge appealed from, and in no case shall the bond be less than fifty dollars, conditioned that the petitioner shall perform the orders of the court.

3. An appeal may be taken by the charge payer or the director to the supreme court of this state irrespective of the amount involved.

89 Acts, ch 131, §25 HF 447  
NEW section

#### **424.14 Reserved.**

#### **424.15 Environmental protection charge refund.**

If it appears that, as a result of mistake, an amount of a charge, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount shall be refunded to such person by the department. A claim for refund that has not been filed with the department within five years after the charge payment upon which a refund is claimed became due, or one year after such charge payment was made, whichever time is the later, shall not be allowed by the director.

Refunds may be made only from the unallocated or uncommitted moneys in the fund created in section 455G.3, and are limited by the total amount budgeted by the fund's board for charge refunds.

89 Acts, ch 131, §26 HF 447  
NEW section

#### **424.16 Notice of change in diminution rate—service of notice.**

1. The board shall notify each person who has previously filed an environmental protection charge return, and any other person known to the board who will owe the charge at any address obtainable for that person, at least forty-five days in advance of the start of any calendar quarter during which either of the following will occur:

a. An administrative change in the cost factor, pursuant to section 424.3, subsection 5, becomes effective.

b. The environmental protection charge is to be discontinued or reimposed pursuant to section 455G.9.

Notice shall be provided by mailing a notice of the change to the address listed on the person's last return. The mailing of the notice is presumptive evidence of the receipt of the notice by the person to whom addressed. The board shall also publish the same notice at least twice in a paper of general circulation within the state at least forty-five days in advance of the first day of the calendar quarter during which a change in paragraph "a" or "b" becomes effective.

2. A notice authorized or required under this section may be given by mailing the notice to the person for whom it is intended, addressed to that person at the address given in the last return filed by the person pursuant to this chapter, or if no return has been filed, then to any address obtainable. The mailing of the notice is presumptive evidence of the receipt of the notice by the person to whom addressed. Any period of time which is determined according to this chapter by the giving of notice commences to run from the date of mailing of the notice. Neither mailed notice or notice by publication is required for the initial determination and imposition of the charge. The board shall undertake to provide reasonable notice of the environmental protection charge and procedures, as in the board's sole discretion it deems appropriate, provided that the actual charge and procedures are published in the Iowa administrative bulletin prior to the effective date of the charge.

3. The provisions of the Code relative to the limitation of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any charge or penalty provided by this chapter.

89 Acts, ch 131, §27 HF 447  
NEW section

#### **424.17 Penalties—offenses—limitation.**

1. If a depositor fails to remit at least ninety percent of the charge due with the filing of the return on or before the due date, or pays less than ninety percent of any charge required to be shown on the return, excepting the period between the completion of an examination of the books and records of a charge payer and the giving of notice to the charge payer that a charge or additional charge is due,

there shall be added to the charge a penalty of fifteen percent of the amount of the charge due, except as provided in section 421.27. In case of willful failure to file a return or willful filing of a false return with intent to evade charges, in lieu of the penalty otherwise provided in this subsection, there shall be added to the amount required to be shown as a charge on the return seventy-five percent of the amount of the charge. The charge payer shall also pay interest on the charge or additional charge at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as the charge imposed under this chapter. Unpaid penalties and interest may be enforced in the same manner as the charge imposed by this chapter.

2. A person who willfully attempts to evade a charge imposed by this chapter or the payment of the charge or a person who makes or causes to be made a false or fraudulent return with intent to evade the charge imposed by this chapter or the payment of charge tax is guilty of a class "D" felony.

3. The certificate of the director to the effect that a charge has not been paid, that a return has not been filed, or that information has not been supplied pursuant to this chapter, shall be prima facie evidence thereof.

4. 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 the person is a nonresident of this state or the residence of the 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.

89 Acts, ch 131, §28 HF 447  
NEW section

#### **424.18 Effective date.**

The environmental protection charge is imposed beginning July 1, 1989. For all deposits subject to the charge made on or after July 1, 1989, the depositor and receiver are obligated to pay the charge as provided in this chapter. The amount of the initial environmental protection charge as calculated after determination of the cost factor by the board and the required forms and procedures shall be published in the Iowa administrative bulletin prior to July 1, 1989.

89 Acts, ch 131, §29 HF 447  
NEW section

## **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, and the owner of the

property being claimed a homestead declares residency in Iowa for purposes of income taxation, and is occupied by the person or person's spouse for at least six months in each of those years. When the property is sold or transferred, the buyer or transferee who wishes to qualify shall refile for the credit. However, when the property is transferred as part of a distribution made pursuant to chapter 598, the transferee who is the spouse retaining ownership of the property is not required to refile for the credit. Property divided pursuant to chapter 598 cannot be modified following the division of the property. An owner who ceases to use a property for a homestead or intends not to use it as a homestead for at least six months in a fiscal year 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 director of human services or the director'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.

89 Acts, ch 256, §1 HF 777  
1989 amendment to unnumbered paragraph 2 effective January 1, 1990, for homestead credits allowed for fiscal years beginning on or after that date; 89 Acts, ch 256, §3 HF 777  
Unnumbered paragraph 2 amended

#### **425.7 Appeals permitted—disallowed claims and penalty.**

1. Any person whose claim is denied under the provisions of this chapter may appeal from the action of the board of supervisors to the district court of the county in which said claimed homestead is situated by giving written notice of such appeal to the county auditor of said county within twenty days from the date of mailing of notice of such action by the board of supervisors.

2. In the event any claim under this chapter is allowed, any owner of an eligible homestead may appeal from the action of the board of supervisors to the district court of the county in which said claimed homestead is situated, by giving written notice of such appeal to the county auditor of said county and such notice to the owner of said claimed homestead as a judge of the district court shall direct.

3. If the director of revenue and finance determines that a claim for homestead credit has been allowed by the board of supervisors which is not justifiable under the law and not substantiated by proper facts, the director may, at any time within thirty-six months from July 1 of the year in which the claim is allowed, set aside the allowance. Notice of the disallowance shall be given to the county auditor of the county in which the claim has been improperly granted and a written notice of the disallowance shall also be addressed to the claimant at the claimant's last known address. The claimant or the board of supervisors may seek judicial review of the action of the director of revenue and finance in accordance with the Iowa administrative procedure Act.

If a claim is disallowed by the director of revenue and finance and a petition for judicial review is not filed with respect to the disallowance, any amounts of credits allowed and paid from the homestead credit fund including the penalty, if any, become a lien upon the property on which credit was originally granted, if still in the hands of the claimant, and not in the hands of a bona fide purchaser, and any amount so erroneously paid including the penalty, if any, shall be collected by the county treasurer in the same manner as other taxes and the collections shall be returned to the department of revenue and finance and credited to the homestead credit fund. The director of revenue and finance may institute legal proceedings against a homestead credit claimant for the collection of payments made on disallowed credits and the penalty, if any. If a homestead credit is disallowed and the claimant failed to give written notice to the assessor as required by section 425.2 when the property ceased to be used as a homestead by the claimant, a civil penalty equal to fifty percent of the amount of the disallowed credit is assessed against the claimant.

89 Acts, ch 251, §33 SF 154  
Subsection 3 amended

#### **425.11 Definitions.**

For the purpose of this chapter and wherever used in this chapter:

1. The word "homestead" shall have the following meaning:

a. The homestead must embrace the dwelling house which the owner, in good faith, is occupying as a home on July 1 of the year for which the credit is claimed and occupies as a home for at least six months during that year, except as herein provided.

When any person is inducted into active service under the Selective Training and Service Act of the United States or whose voluntary entry into active service results in a credit on the quota of persons required for service under the Selective Training and Service Act, or who, being a member of any component part of the military, naval, or air forces or nurse corps of this state or nation, is called or ordered into active service, such person shall be considered as occupying or living on the homestead during such service and, where equitable or legal title of the homestead is in the spouse of the person who is a member of or is inducted into the armed services of the United States, the spouse shall be considered as occupying or living on the homestead during such service.

When any person is confined in a nursing home, extended-care facility, or hospital, such person shall be considered as occupying or living on a homestead where such person is the owner of such homestead and such person maintains such homestead and does not lease, rent, or otherwise receive profits from other persons for the use thereof.

b. It may contain one or more contiguous lots or tracts of land with the buildings or other appurtenances thereon habitually, and in good faith, used as a part of the homestead.

c. It must not embrace more than one dwelling house, but where a homestead has more than one dwelling house situated thereon, the credit provided for in this chapter shall apply to the home and buildings used by the owner, but shall not apply to any other dwelling house and buildings appurtenant.

d. The words "*dwelling house*" shall embrace any building occupied wholly or in part by the claimant as a home.

2. The word "*owner*" shall mean the person who holds the fee simple title to the homestead, and in addition shall mean the person occupying as a surviving spouse or the person occupying under a contract of purchase which contract has been recorded in the office of the county recorder of the county in which the property is located, or the person occupying the homestead under devise or by operation of the inheritance laws where the whole interest passes or where the divided interest is shared only by persons related or formerly related to each other by blood, marriage or adoption, or the person occupying the homestead under a deed which conveys a divided interest where the divided interest is shared only by persons related or formerly related to each other by blood, marriage or adoption or where the person occupying the homestead holds a life estate with the reversion interest held by a nonprofit corporation organized under chapter 504A, provided that the holder of the life estate is liable for and pays property tax on the homestead or where the person occupying the homestead holds an interest in a horizontal property regime under chapter 499B, regardless of whether the underlying land committed to the horizontal property regime is in fee or as a leasehold interest, provided that the holder of the interest in the horizontal property regime is liable for and pays property tax on the homestead. For the purpose of this chapter the word "*owner*" shall be construed to mean a bona fide owner and not one for the purpose only of availing the person of the benefits of this chapter. In order to qualify for the homestead tax credit, evidence of ownership shall be on file in the office of the clerk of the district court or recorded in the office of the county recorder at the time the owner files with the assessor a verified statement of the homestead claimed by the owner as provided in section 425.2.

3. The words "*assessed valuation*" shall mean the taxable valuation of the homestead as fixed by the assessor, or by the board of review, under the provisions of section 441.21, without deducting therefrom the exemptions authorized in section 427.3.

Where not in conflict with the terms of the definitions above set out, the provisions of chapter 561 shall control.

89 Acts, ch 256, §2 HF 777

1989 amendment to subsection 1, paragraph a, effective January 1, 1990, for homestead credits allowed for fiscal years beginning on or after that date; 89 Acts, ch 256, §3 HF 777

Subsection 1, paragraph a, unnumbered paragraph 1 amended

#### 425.17 Definitions.

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

1. "*Income*" means the sum of Iowa net income as defined in section 422.7, plus all of the following to the extent not already included in Iowa net income: Capital gains, alimony, child support money, cash public assistance and relief, except property tax relief granted under this division, the gross amount of any pension or annuity, including but not limited to railroad retirement benefits, all payments received under the federal social security Act, and all military retirement and veterans' disability pensions, interest received from the state or federal government or any of its instrumentalities, workers' compensation and the gross amount of disability income or "loss of time" insurance. "*Income*" does not include gifts from nongovernmental sources, or surplus foods or other relief in kind supplied by a governmental agency.

2. "*Household*" means a claimant, spouse, and any person related to the claimant or spouse by blood, marriage, or adoption and living with the claimant at any time during the base year. "Living with" refers to domicile and does not include a temporary visit.

3. "*Household income*" means all income of the claimant and the claimant's spouse in a household and actual monetary contributions received from any other household member during their respective twelve-month income tax accounting periods ending with or during the base year.

4. "*Homestead*" means the dwelling owned or rented and actually used as a home by the claimant during all or part of the base year, and so much of the land surrounding it including one or more contiguous lots or tracts of land, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multidwelling or multipurpose building and a part of the land upon which it is built. It does not include personal property except that a mobile home may be a homestead. Any dwelling or a part of a multidwelling or multipurpose building which is exempt from taxation does not qualify as a homestead under this division. However, solely for purposes of claimants living in a property and receiving reimbursement for rent constituting property taxes paid immediately before the property becomes tax exempt, and continuing to live in it after it becomes tax exempt, the property shall continue to be classified as a homestead. A homestead must be located in this state. When a person is confined in a nursing home, extended-care facility, or hospital, the person shall be considered as occupying or living in the person's homestead if the person is the owner of the homestead and the person maintains the homestead and does not lease, rent, or otherwise receive profits from other persons for the use of the homestead.

5. "*Claimant*" means a person filing a claim for credit or reimbursement under this division who has attained the age of sixty-five years on or before December 31 of the base year or who is a surviving spouse having attained the age of fifty-five years on or before December 31, 1988, or who is totally disabled and was totally disabled on or before December 31 of the base year, and was domiciled in this state during the entire base year and is domiciled in this state at the time the claim is filed or at the time of the person's death in the case of a claim filed by the executor or administrator of the claimant's estate. "*Claimant*" includes a vendee in possession under a contract for deed and may include one or more joint tenants or tenants in common. In the case of a claim for rent constituting property taxes paid, the claimant shall have rented the property during any part of the base year. If a homestead is occupied by two or more persons, and more than one person is able to qualify as a claimant, the persons may determine among them who will be the claimant. If they are unable to agree, the matter shall be referred to the director of revenue and finance not later than October 31 of each year and the director's decision is final.

6. "*Totally disabled*" means the inability to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or is reasonably expected to last for a continuous period of not less than twelve months.

7. "*Rent constituting property taxes paid*" means twenty-seven and one-half percent of the gross rent actually paid in cash or its equivalent during the base year by the claimant or the claimant's household solely for the right of occupancy of their homestead in the base year, and which rent constitutes the basis, in the succeeding year, of a claim for reimbursement under this division by the claimant.

8. "*Gross rent*" means rental paid at arm's length solely for the right of occupancy of a homestead or mobile home, including rent for space occupied by a mobile home not to exceed one acre, exclusive of charges for any utilities, services, furniture, furnishings, or personal property appliances furnished by the landlord as a part of the rental agreement whether or not expressly set out in the rental agreement. If the director of revenue and finance determines that the landlord

and tenant have not dealt with each other at arm's length, and the director of revenue and finance is satisfied that the gross rent charged was excessive, the director shall adjust the gross rent to a reasonable amount as determined by the director. If the landlord does not supply the charges for any utilities, services, furniture, furnishings, or personal property appliances furnished by the landlord, or if the charges appear to be incorrect, the director of revenue and finance may apply a percentage determined from samples of similar gross rents paid solely for the right of occupancy.

9. "*Property taxes due*" means property taxes including any special assessments, but exclusive of delinquent interest and charges for services, due on a claimant's homestead in this state, but includes only property taxes for which the claimant is liable and which will actually be paid by the claimant. However, if the claimant is a person whose property taxes have been suspended under sections 427.8 and 427.9, "*property taxes due*" means property taxes including any special assessments, but exclusive of delinquent interest and charges for services, due on a claimant's homestead in this state, but includes only property taxes for which the claimant is liable and which would have to be paid by the claimant if the payment of the taxes has not been suspended pursuant to sections 427.8 and 427.9. "*Property taxes due*" shall be computed with no deduction for any credit under this division or for any homestead credit allowed under section 425.1. Each claim shall be based upon the taxes due during the fiscal year next following the base year. If a homestead is owned by two or more persons as joint tenants or tenants in common, and one or more persons are not members of claimant's household, "*property taxes due*" is that part of property taxes due on the homestead which equals the ownership percentage of the claimant and the claimant's household. The county treasurer shall include with the tax receipt a statement that if the owner of the property is sixty-five years of age or over or is totally disabled, or is a surviving spouse who was fifty-five years of age on or before December 31, 1988, the person may be eligible for the credit allowed under this division. If a homestead is an integral part of a farm, the claimant may use the total property taxes due for the larger unit. If a homestead is an integral part of a multidwelling or multipurpose building the property taxes due for the purpose of this subsection shall be prorated to reflect the portion which the value of the property that the household occupies as its homestead is to the value of the entire structure. For purposes of this subsection, "*unit*" refers to that parcel of property covered by a single tax statement of which the homestead is a part.

10. "*Special assessment*" means special assessments made pursuant to sections 384.37 to 384.79. The amount of a special assessment which may be included in the amount of property taxes due for one year shall be an amount equal to one-tenth of the total amount of the special assessment levied against the homestead of the claimant, if the claimant elects to pay the total amount of the special assessment in one payment. If the claimant elects to pay the special assessment in ten annual installments as provided by law, the claimant may include as a portion of the property taxes due during the fiscal year next following the base year an amount equal to the special assessment, including interest, due during that same fiscal year.

11. "*Base year*" means the calendar year last ending before the claim is filed.

89 Acts, ch 233, §1 HF 771

1989 amendment to subsection 4 is retroactive to January 1, 1988; 89 Acts, ch 233, §2 HF 771

Subsection 4 amended

## CHAPTER 426

### AGRICULTURAL LAND TAX CREDIT

**426.9 Pro rata disbursement.** Repealed by 89 Acts, ch 296, §96. SF 141

## CHAPTER 426A

## MILITARY SERVICE TAX CREDIT

**426A.2 Military service tax credit.**

The moneys shall be apportioned each year so as to replace all or a portion of the tax which would be due on property eligible for military service tax exemption in the state, if the property were subject to taxation, the amount of the credit to be not more than six dollars and seventy-five cents per thousand dollars of assessed value of property which would be subject to the tax, except for the military service tax exemption.

89 Acts, ch 83, §51 SF 112  
Section amended

**426A.6 Setting aside allowance.**

If the director of revenue and finance determines that a claim for military service tax exemption has been allowed by a board of supervisors which is not justifiable under the law and not substantiated by proper facts, the director may, at any time within thirty-six months from July 1 of the year in which the claim is allowed, set aside the allowance. Notice of the disallowance shall be given to the county auditor of the county in which the claim has been improperly granted and a written notice of the disallowance shall also be addressed to the claimant at the claimant's last known address. The claimant or the board of supervisors may seek judicial review of the action of the director of revenue and finance in accordance with chapter 17A. If a claim is disallowed by the director of revenue and finance and a petition for judicial review is not filed with respect to the disallowance, the credits allowed and paid from the general fund of the state become a lien upon the property on which the credit was originally granted, if still in the hands of the claimant and not in the hands of a bona fide purchaser, the amount so erroneously paid shall be collected by the county treasurer in the same manner as other taxes, and the collections shall be returned to the department of revenue and finance and credited to the general fund of the state. The director of revenue and finance may institute legal proceedings against a military service tax exemption claimant for the collection of payments made on disallowed exemptions.

89 Acts, ch 251, §34 SF 154  
Section amended

## 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. Reserved.

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 and grounds of homes owned and operated by organizations of soldiers, sailors, or marines of any of the wars of the United States when used for a home for disabled soldiers, sailors, or marines and not operated for pecuniary profit.

13. *Agricultural produce.* Growing agricultural and horticultural crops except commercial orchards and vineyards.

14. *Rent.* Obligations for rent not yet due and owned by the original payee.

15. Reserved.

16. Reserved.

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, 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. Reserved.

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. Reserved.

29. Reserved.

30. *Rural water sales.* The real property of a nonprofit corporation engaged in the distribution and sale of water to rural areas when devoted to public use and not held for pecuniary profit.

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. Reserved.

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 natural resource 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.

89 Acts, ch 296, §43, 44 SF 141  
Subsections 10, 15, 16, 21, 28, 29 and 35 stricken  
Subsections 12, 13, 19 and 30 amended

### 427.3 Military service—exemptions.

The following exemptions from taxation shall be allowed:

1. The property, not to exceed eleven thousand one hundred eleven dollars in taxable value of an honorably discharged union soldier, sailor, or marine of the Mexican war or the war of the rebellion.

2. The property, not to exceed six thousand six hundred sixty-seven dollars in taxable value of an honorably discharged soldier, sailor, marine or nurse of the war with Spain, Tyler Rangers, Colorado volunteers in the war of the rebellion, 1861 to 1865, Indian wars, Chinese relief expedition or Philippine insurrection.

3. The property, not to exceed two thousand seven hundred seventy-eight dollars in taxable value of any honorably discharged soldier, sailor, marine, or nurse of the first World War.

4. The property, not to exceed one thousand eight hundred fifty-two dollars in taxable value of an honorably separated, retired, furloughed to a reserve, placed on inactive status, or discharged soldier, sailor, marine, or nurse of the second World War from December 7, 1941, to December 31, 1946, army of occupation in Germany from November 12, 1918, to July 11, 1923, American expeditionary forces in Siberia from November 12, 1918, to April 30, 1920, second Nicaraguan campaign with the navy or marines in Nicaragua or on combatant ships

1926-1933, second Haitian suppression of insurrections 1919-1920, navy and marine operations in China 1937-1939 and Yangtze service with navy and marines in Shanghai or in the Yangtze Valley 1926-1927 and 1930-1932 or of the Korean Conflict at any time between June 25, 1950, and January 31, 1955, both dates inclusive, or those who served on active duty during the Vietnam Conflict beginning December 22, 1961, and ending May 7, 1975, both dates inclusive. For the purposes of this section, "active duty" means full-time duty in the armed forces of the United States, excluding active duty for training purposes only and excluding any period a person was assigned by the armed forces to a civilian institution for a course of education or training which was substantially the same as established courses offered to civilians, or as a cadet or midshipman, however enrolled, at one of the service academies.

5. Where the word "*soldier*" appears in this chapter, it includes, without limitation, the members of the United States air force and the United States merchant marine.

6. For the purpose of determining a military tax exemption under this section, property includes a mobile home as defined in section 135D.1.

89 Acts, ch 296, §45 SF 141  
Subsection 5 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 or 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 and finance pursuant to section 426A.3.

89 Acts, ch 296, §46 SF 141  
Unnumbered paragraph 2 amended

#### **427.8 Petition for suspension or cancellation of taxes, assessments, and rates.**

If a person, by reason of age or infirmity, is unable to contribute to the public revenue, the person may file a petition, duly sworn to, with the board of supervisors, stating that fact and giving a statement of real property owned or possessed by the petitioner, and other information as the board may require. The board of supervisors may order the county treasurer to suspend the collection of the taxes, special assessments under sections 384.37 through 384.79, and rates or assessments imposed under section 384.84 or chapter 317 or 364 which are assessed against the petitioner or the petitioner's estate, or both, for the current year and those unpaid for prior years, or the board may cancel and remit the taxes, special assessments, and other assessments or rates. However, the petition must first be approved by the council of the city in which the property of the petitioner is located, or by the township trustees of the township in which the property is located.

89 Acts, ch 296, §47 SF 141  
Section amended

#### **427.13 What taxable.**

All other real property is subject to taxation in the manner prescribed, and this section is also intended to embrace ferry franchises and toll bridges, which, for the purpose of this chapter are considered real property.

However, this section is subject to section 427.1.

89 Acts, ch 296, §48 SF 141  
Section amended

**427.16 Exemption provisions for personal property in transit.** Repealed by 89 Acts, ch 296, §96. SF 141

## **CHAPTER 427B**

### **SPECIAL TAX PROVISIONS**

**427B.18 and 427B.19** Reserved.

#### **DIVISION IV**

#### **UNDERGROUND STORAGE TANKS REMEDIAL ACTION CREDIT**

#### **427B.20 Local option remedial action property tax credit—public hearing.**

1. In order to further the public interests of protecting the drinking water supply, preserving business and industry within a community, preserving conve-

nient access to gas stations within a community, or other public purposes, a city council or county board of supervisors may provide by ordinance for partial or total property tax credits to owners of small businesses that own or operate an underground storage tank to reduce the amount of property taxes paid over the permitted period in amounts not to exceed the actual portion of costs paid by the business owner in connection with a remedial action for which the Iowa comprehensive petroleum underground storage tank fund shares in the cost of corrective action, and for which the small business owner was not reimbursed from any other source. A county board of supervisors may grant credits only for property located outside of the corporate limits of a city, and a city council may grant credits only for property located within the corporate limits of the city. The credit shall be taken on the property where the underground storage tank is situated. The credit granted by the council or board shall not exceed the amount of taxes generated by the property for the respective city or county. The credit shall apply to property taxes payable in the fiscal year following the calendar year in which a cost of remedial action was paid by the small business owner.

As used in this division, "*actual portion of the costs paid by the owner or operator of an underground storage tank in connection with a remedial action for which the Iowa comprehensive petroleum underground storage tank fund shares in the cost of corrective action*" means the amount determined by the fund's board, or the board's designee, as the administrator of the Iowa comprehensive petroleum underground storage tank fund, and for which the owner or operator was not reimbursed from any other source.

As used in this division, "*small business*" means a business with gross receipts of less than five hundred thousand dollars per year.

2. The ordinance may be enacted not less than thirty days after a public hearing is held in accordance with section 358A.6 in the case of a county, or section 362.3 in the case of a city. The ordinance shall designate the length of time the partial or total credit shall be available, and shall include a credit schedule and description of the terms and conditions of the credit.

3. A property tax credit provided under this section shall be paid for out of any available funds budgeted for that purpose by the city council or county board of supervisors. A city council may certify a tax for the general fund levy and a county board of supervisors may certify a tax for the rural county service fund levy for property tax credits authorized by this section.

4. The maximum permitted period of a tax credit granted under this section is ten years.

89 Acts, ch 131, §30 HF 447  
NEW section

#### **427B.21 Application for credit by underground storage tank owner or operator—approval by county board of supervisors or city council.**

An application shall be filed by an owner of a small business that owns or operates an underground storage tank for each property for which a credit is sought. Applications shall be filed with the respective county board of supervisors or the city council by September 30 of the year following the calendar year in which a cost of remedial action was paid by the owner or operator. Small business owners receiving credits shall file applications for renewal of the credit by September 30 of each year. A credit may be renewed only if title to the credited property remains in the name of the person or entity originally receiving the credit.

In reviewing the applications, the board of supervisors or city council shall consider whether granting the credit would serve a public purpose. Upon approval of the application by the board of supervisors, and after the applicant has paid any property taxes due, the board shall direct the county treasurer to issue a warrant to the small business owner in the amount of the credit granted. Upon approval of

the application by the city council, and after the applicant has paid any property taxes due, the council shall direct the city clerk to issue a warrant to the small business owner in the amount of the credit granted.

Applications for credit shall be made on forms prescribed by the director of revenue and finance and shall contain information pertaining to the nature of the release, the total cost of corrective action, the actual portion of the costs paid by the small business owner and for which the owner was not reimbursed from any other source, the small business owner's income tax form from the most recent tax year, and other information deemed necessary by the director.

89 Acts, ch 131, §31 HF 447  
NEW section

#### **427B.22 Credit may be repealed.**

If in the opinion of the city council or the county board of supervisors continuation of the credit granted under an ordinance adopted pursuant to this division ceases to be of benefit to the city or county, the city council or the county board of supervisors may repeal the ordinance authorized by section 427B.20, but all existing credits shall continue until their expiration.

89 Acts, ch 131, §32 HF 447  
NEW section

## CHAPTER 428

### LISTING IN GENERAL

#### **428.1 Listing of property.**

Every inhabitant of this state, of full age and sound mind, shall list for the assessor all property subject to taxation in the state, of which the inhabitant is the owner, or has the control or management, in the manner herein directed:

1. The property of one under disability, by the person having charge thereof.
2. The property of a married person, by either party.
3. The property of a beneficiary for whom the property is held in trust, by the trustee.
4. The property of a body corporate, company, society or partnership, by its principal accountant, officer, agent, or partner, as the assessor may demand.
5. Property under mortgage or lease is to be listed by and taxed to the mortgagor or lessor, unless listed by the mortgagor or lessee.

89 Acts, ch 296, §49 SF 141  
Subsection 4 stricken and subsections 5 and 6 renumbered as 4 and 5

#### **428.3 Agent personally liable. Repealed by 89 Acts, ch 296, §96. SF 141**

#### **428.4 Real estate—buildings.**

Property shall be assessed for taxation each year. Real estate shall be listed and assessed in 1981 and every two years thereafter. The assessment of real estate shall be the value of the real estate as of January 1 of the year of the assessment. The year 1981 and each odd-numbered year thereafter shall be a reassessment year. In any year, after the year in which an assessment has been made of all the real estate in an assessing jurisdiction, the assessor shall value and assess or revalue and reassess, as the case may require, any real estate that the assessor finds was incorrectly valued or assessed, or was not listed, valued, and assessed, in the assessment year immediately preceding, also any real estate the assessor finds has changed in value subsequent to January 1 of the preceding real estate assessment year. However, a percentage increase on a class of property shall not be made in a year not subject to an equalization order unless ordered by the department of revenue and finance. The assessor shall determine the actual value

and compute the taxable value thereof as of January 1 of the year of the revaluation and reassessment. The assessment shall be completed as specified in section 441.28, but no reduction or increase in actual value shall be made for prior years. If an assessor makes a change in the valuation of the real estate as provided for, sections 441.23, 441.37, 441.38 and 441.39 apply.

The assessor shall notify the director of revenue and finance, in the manner and form to be prescribed by the director, as to the class or classes of real estate reviewed, revalued, and reassessed and shall report such details as to the effects or results of the revaluation and reassessment as may be deemed necessary by the director. This notification shall be contained in a report to be attached to the abstract of assessment for the year in which the new valuations become effective.

Any buildings erected, improvements made, or buildings removed in a year after the assessment of the class of real estate to which they belong shall be valued, listed and assessed and reported by the assessor to the county auditor after approval of the valuations by the local board of review, and said auditor shall thereupon enter the taxable value of such building or taxable improvement on the tax list as a part of real estate to be taxed. If such buildings are erected by any person other than the owner of the land, they shall be listed and assessed to the owner of the buildings or improvements as real estate.

89 Acts, ch 296, §50, 51 SF 141  
Unnumbered paragraph 1 amended  
Unnumbered paragraph 4 stricken

**428.8 Place of listing.** Repealed by 89 Acts, ch 296, §96. SF 141

**428.10 Ice and coal dealers.**

Each ice or coal dealer shall be assessed upon the average amount of capital used by the dealer in conducting the dealer's business. In estimating the amount of capital so used, there shall be taken into consideration the increase and decrease of the value of ice and coal held in store, and upon the value of the dealer's warehouses or ice houses situated upon lands leased from railway companies or other persons, and upon the value, if any, of such leasehold interest.

In determining the average amount of capital invested the assessor shall take into consideration the entire year's business prior to January 1, next preceding the assessment period.

89 Acts, ch 296, §52 SF 141  
Section amended

**428.12 Branch banks.** Repealed by 89 Acts, ch 296, §96. SF 141

**428.16 "Merchant" defined.** Repealed by 89 Acts, ch 296, §96. SF 141

**428.17 Stocks of merchandise.** Repealed by 89 Acts, ch 296, §96. SF 141

**428.18 Warehouse operator to file list.** Repealed by 89 Acts, ch 296, §96. SF 141

**428.19 Warehouse operator deemed owner.** Repealed by 89 Acts, ch 296, §96. SF 141

**428.20 "Manufacturer" defined—duty to list.**

A person who purchases, receives, or holds personal property of any description for the purpose of adding to its value by a process of manufacturing, refining, purifying, combining of different materials, or by the packing of meats, with a view to selling the property for gain or profit, is a "manufacturer" for the purposes of this title, and shall list such property for taxation.

89 Acts, ch 296, §53 SF 141  
Section amended

**428.21 Assessment—how made.** Repealed by 89 Acts, ch 296, §96. SF 141

**428.23 Manufacturer to list.**

Corporations organized under the laws of this state for pecuniary profit and engaged in manufacturing as defined in section 428.20 shall list their real property in the same manner as is required of individuals.

89 Acts, ch 296, §54 SF 141  
Section amended

**428.35 Grain handled.**

1. *Definitions.* "Person" as used herein means individuals, corporations, firms and associations of whatever form. "Handling or handled" as used herein means the receiving of grain at or in each elevator, warehouse, mill, processing plant or other facility in this state in which it is received for storage, accumulation, sale, processing or for any purpose whatsoever. "Grain" as used herein means wheat, corn, barley, oats, rye, flaxseed, field peas, soybeans, grain sorghums, spelts, and such other products as are usually stored in grain elevators. Such term excludes such seeds after being processed, and the products of such processing when packaged or sacked. The term "processing" shall not include hulling, cleaning, drying, grading or polishing.

2. *Tax imposed.* An annual excise tax is hereby levied on such handling of grain in the amount hereinafter provided. All grain so handled shall be exempt from all taxation as property under the laws of this state. The amount of such excise tax shall be a sum equal to one-fourth mill per bushel upon all grain as herein defined so handled.

3. *Statement filing form.* Every person engaged in handling grain shall, on the first day of January of each year and not later than sixty days thereafter, make and file with the assessor a statement of the number of bushels of grain handled by the person in that district during the year immediately preceding, or the part thereof, during which the person was engaged in handling grain; and on demand the assessor shall have the right to inspect all such person's records thereof. A form for making such statement shall be included in the blanks prescribed by the director of revenue and finance. If such statement is not furnished as herein required, section 441.24, shall be applicable.

4. *Assessment.* The assessor of each such district, from the statement required or from such other information as the assessor may acquire, shall ascertain the number of bushels of grain handled by each person handling grain in the assessor's district during the preceding year, or part thereof, and shall assess the amount herein provided to such person under the provisions of this section.

5. *Computation of tax.* The rate imposed by subsection 2 shall be applied to the number of bushels of grain so handled, and the computed amount thereof shall constitute the tax to be assessed.

6. *Payment of tax.* The tax, when determined, shall be entered in the same manner as general property taxes on the tax list of the taxing district, and the proceeds of the collection of the tax shall be distributed to the same taxing units and in the same proportion as the general property tax on the tax list of each taxing district. All provisions of the law relating to the assessment and collection of property taxes and the powers and duties of the county treasurer, county auditor and all other officers with respect to the assessment, collection, and enforcement of property taxes apply to the assessment, collection, and enforcement of the tax imposed by this section.

89 Acts, ch 296, §55 SF 141  
Subsection 6 amended

**428.36 Listing property of financial institutions.**

The real estate, fixtures, and equipment, as defined in section 427A.1, of every financial institution, as defined in chapter 422, division V, and of every credit

union established under chapter 533 shall be listed, assessed, and taxed to the institution or the credit union in the same manner and at the same rate as such property in the hands of individuals.

89 Acts, ch 296, §56 SF 141  
Section amended

## CHAPTER 428A

### TAXATION OF REAL ESTATE TRANSFERS

#### 428A.1 Amount of tax on transfers—declaration of value.

There is imposed on each deed, instrument, or writing by which any lands, tenements, or other realty in this state 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 20, 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.

89 Acts, ch 271, §1 HF 765  
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.

20. Deeds transferring distributions of assets to heirs at law or devisees under a will.

89 Acts, ch 271, §2 HF 765  
NEW subsection 20

## CHAPTER 430A

### TAXATION OF LOAN AGENCIES

#### 430A.6 Real property assessment.

All real property of individuals, corporations or agencies subject to this chapter and located within the state of Iowa shall be assessed in the same manner as other real property.

89 Acts, ch 296, §57 SF 141  
Section amended

## CHAPTER 432

### INSURANCE COMPANIES TAXATION

#### 432.7 Assessment.

The assessor shall, upon the receipt of the statements, and from other information acquired by the assessor, assess against every corporation or association referred to in section 432.6, the actual value of each parcel of real estate situated in the assessment district of the assessor, and all the property shall be assessed at the same rate, and for the same purposes as the property of private individuals, as provided in section 441.21.

89 Acts, ch 296, §58 SF 141  
Section amended

## CHAPTER 433

### TELEGRAPH AND TELEPHONE COMPANIES TAXATION

#### 433.11 Other real property.

Land, lots, and other real property belonging to a telegraph company or telephone company not used exclusively in its telegraph or telephone business are subject to assessment and taxation on the same basis as other property of individuals in the counties where situated.

89 Acts, ch 296, §59 SF 141  
Section amended

## CHAPTER 435

## RAILWAY MILEAGE TAX

Repealed by 89 Acts, ch 6, §7 SF 113

## CHAPTER 441

## ASSESSMENT AND VALUATION OF PROPERTY

**441.10 Examination and appointment of deputies—incumbents.**

Immediately after the appointment of the assessor, and at other times as the conference board directs, one or more deputy assessors may be appointed by the assessor. Each appointment shall be made from either the list of eligible candidates provided by the director of revenue and finance, which shall contain only the names of those persons who achieve a score of seventy percent or greater on the examination administered by the director of revenue and finance, or the list of candidates eligible for appointment as city or county assessor. Examinations for the position of deputy assessor shall be conducted in the same manner as examinations for the position of city or county assessor. The applicable provisions of section 441.5 regarding the register of names shall also apply to the list of eligible candidates established under the provisions of this section.

Following the administration of the examination, the director of revenue and finance shall establish a register containing the names, in alphabetical order, of all individuals who are eligible for appointment as a deputy assessor. The test scores of individuals on the register shall be given to a city or county conference board upon request. All eligible individuals shall remain on the register for a period of two years following the date of certification granted by the director.

Incumbent deputy assessors who have served six consecutive years shall be placed on the register of individuals eligible for appointment as deputy assessor. In order to be appointed to the position of deputy assessor, the deputy assessor shall comply with the continuing education requirements. The number of credits required for certification as eligible for appointment as a deputy assessor in a jurisdiction other than where the deputy assessor is currently serving shall be prorated according to the percentage of the deputy assessor's term which is covered by the continuing education requirements of section 441.8. The credit necessary for certification for appointment is the product of ninety multiplied by the quotient of the number of months served of a deputy assessor's term covered by the continuing education requirements of section 441.8 divided by seventy-two. If the number of credits necessary for certification for appointment as determined under this paragraph results in a partial credit hour, the credit hour shall be rounded to the nearest whole number.

The assessor may peremptorily suspend or discharge any deputy assessor under the assessor's direction upon written charges for neglect of duty, disobedience of orders, misconduct, or failure to properly perform the deputy assessor's duties. Within five days after delivery of written charges to the employee, the deputy assessor may appeal by written notice to the secretary or chairperson of the examining board. The board shall grant the deputy assessor a hearing within fifteen days, and a decision by a majority of the examining board is final. The assessor shall designate one of the deputies as chief deputy, and the assessor shall assign to each deputy the duties, responsibilities, and authority as is proper for the efficient conduct of the assessor's office.

#### 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 in the assessor's county or city, except property 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 for inaccuracy of measurements as necessary or upon written request of the county treasurer 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 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.

89 Acts, ch 296, §61 SF 141  
Subsections 2 and 10 amended

#### **441.19 Owner to assist—provisions for assessment.**

The assessor shall list every person in the assessor's county or city as the case may be and assess all the property in the county or city, except property exempted or otherwise assessed. A person who refuses to assist in making out a list of the person's property, or of any property which the person is by law required to assist in listing, is guilty of a simple misdemeanor.

1. Supplemental and optional to the procedure for the assessment of property by the assessor as provided in this chapter, the assessor may require from all persons required to list their property for taxation as provided by sections 428.1 and 428.2, a supplemental return to be prescribed by the director of revenue and finance upon which the person shall list the person's property. The supplemental return shall be in substantially the same form as now prescribed by law for the assessment rolls used in the listing of property by the assessors. Every person required to list property for taxation shall make a complete listing of the property upon supplemental forms and return the listing to the assessor as promptly as possible. The return shall be verified over the signature of the person making the return and section 441.25 applies to any person making such a return. The assessor shall make supplemental return forms available as soon as practicable after the first day of January of each year. The assessor shall make supplemental return forms available to the taxpayer by mail, or at a designated place within the taxing district.

2. Upon receipt of such supplemental return from any person the assessor shall prepare a roll assessing such person as hereinafter provided. In the preparation of such assessment roll the assessor shall be guided not only by the information contained in such supplemental roll, but by any other information the assessor may have or which may be obtained by the assessor as prescribed by the law relating to the assessment of property. The assessor shall not be bound by any values as listed in such supplemental return, and may include in the assessment roll any property omitted from the supplemental return which in the knowledge and belief of the assessor should be listed as required by law by the person making the supplemental return. Upon completion of such roll the assessor shall deliver to the person submitting such supplemental return a copy of the assessment roll, either personally or by mail.

3. Any taxpayer aggrieved by the action of the assessor in the preparation of an assessment roll upon which a supplemental return has been made shall have the same rights and privileges of appeal as provided by law in connection with the assessment rolls prepared in entirety by the assessor, but no assessment rolls prepared by the assessor after receiving a supplemental return shall be deemed insufficient or invalid because of the fact that such assessment roll does not bear the signature of the person assessed, and the signature of the person listing property upon the supplemental return shall be deemed a signature on the roll as prepared by the assessor.

4. The supplemental returns herein provided for shall be preserved in the same manner as assessment rolls, but shall be confidential to the assessor, board of review, or director of revenue and finance, and shall not be open to public inspection, but any final assessment roll as made out by the assessor shall be a public record, provided that such supplemental return shall be available to counsel of either the person making the return or of the public, in case any appeal is taken to the board of review or to the court.

5. In the event of failure of any person required to list property to make a supplemental return, as required herein, on or before the fifteenth day of February of any year when such listing is required, the assessor shall proceed in the listing and assessment of the person's property as provided by this chapter, and no person subject to taxation shall be relieved of the person's obligation to list the person's property through failure to make a supplemental return as herein provided, and any roll prepared by the assessor after receiving a supplemental return or when prepared in accordance with other provisions of this chapter, shall be a valid assessment.

6. The provisions of this chapter relating to assessment rolls shall be applicable to the preparation of rolls upon which a supplemental return has been received, insofar as they are not in conflict with the provision of this section.

On or before February 15 of each year, each owner of industrial real estate shall submit to the local assessor a report listing by year of acquisition and by acquisition cost the owner's machinery as described in section 427A.1, subsection 1, paragraph "c", and specifying any machinery added or removed during the preceding assessment year. A report containing an itemized list of machinery by year of acquisition and by acquisition cost shall be required only when deemed necessary by the assessor. The reports shall be submitted on forms prescribed by the director of revenue and finance or on forms submitted by the taxpayer and approved by the assessor which forms shall contain the same information as is required to be reported on forms prescribed by the director. If a person shall knowingly enter false information on the report, the person shall be guilty of a simple misdemeanor. Also, if a person refuses to file the report provided for in this paragraph, the assessor shall proceed in accordance with the provisions of section 441.24.

89 Acts, ch 296, §62 SF 141

Unnumbered paragraph 1, and subsection 1 amended

**441.20 Oath.** Repealed by 89 Acts, ch 296, §96. SF 141

**441.21 Actual, assessed and taxable value.**

1. *a.* All property subject to taxation shall be valued at its actual value which shall be entered opposite each item, and, except as otherwise provided in this section, shall be assessed at one hundred percent of its actual value, and the value so assessed shall be taken and considered as the assessed value and taxable value of the property upon which the levy shall be made.

*b.* The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property except as otherwise provided in this section. "Market value" is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property. Sale prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at its market value. In arriving at market value, sale prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including but not limited to sales to immediate family of the seller, foreclosure or other

forced sales, contract sales, discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit.

The actual value of special purpose tooling, which is subject to assessment and taxation as real property under section 427A.1, subsection 1, paragraph "e", but which can be used only to manufacture property which is protected by one or more United States or foreign patents, shall not exceed the fair and reasonable exchange value between a willing buyer and a willing seller, assuming that the willing buyer is purchasing only the special purpose tooling and not the patent covering the property which the special purpose tooling is designed to manufacture nor the rights to manufacture the patented property. For purposes of this paragraph, special purpose tooling includes dies, jigs, fixtures, molds, patterns, and similar property. The assessor shall not take into consideration the special value or use value to the present owner of the special purpose tooling which is designed and intended solely for the manufacture of property protected by a patent in arriving at the actual value of the special purpose tooling.

c. In assessing and determining the actual value of special purpose industrial property having an actual value of five million dollars or more, the assessor shall equalize the values of such property with the actual values of other comparable special purpose industrial property in other counties of the state. Such special purpose industrial property includes, but is not limited to chemical plants. If a variation of ten percent or more exists between the actual values of comparable industrial property having an actual value of five million dollars or more located in separate counties, the assessors of the counties shall consult with each other and with the department of revenue and finance to determine if adequate reasons exist for the variation. If no adequate reasons exist, the assessors shall make adjustments in the actual values to provide for a variation of ten percent or less. For the purposes of this paragraph, special purpose industrial property includes structures which are designed and erected for operation of a unique and special use, are not rentable in existing condition, and are incapable of conversion to ordinary commercial or industrial use except at a substantial cost.

d. Actual value of property in one assessing jurisdiction shall be equalized as compared with actual value of property in an adjoining assessing jurisdiction. If a variation of five percent or more exists between the actual values of similar, closely adjacent property in adjoining assessing jurisdictions in Iowa, the assessors thereof shall determine whether adequate reasons exist for such variation. If no such reasons exist, the assessors shall make adjustments in such actual values to reduce the variation to five percent or less.

e. The actual value of agricultural property shall be determined on the basis of productivity and net earning capacity of the property determined on the basis of its use for agricultural purposes capitalized at a rate of seven percent and applied uniformly among counties and among classes of property. Any formula or method employed to determine productivity and net earning capacity of property shall be adopted in full by rule.

f. In counties or townships in which field work on a modern soil survey has been completed since January 1, 1949, the assessor shall place emphasis upon the results of the survey in spreading the valuation among individual parcels of such agricultural property.

g. Notwithstanding any other provision of this section, the actual value of any property shall not exceed its fair and reasonable market value, except agricultural property which shall be valued exclusively as provided in paragraph "e" of this subsection.

2. The market value of an inventory or goods in bulk shall be their market value as such inventory or goods in bulk, not their retail or unit price. Such market value shall be fair and reasonable based on market value of similar classes of property.

In the event market value of the property being assessed cannot be readily established in the foregoing manner, then the assessor may determine the value of the property using the other uniform and recognized appraisal methods including its productive and earning capacity, if any, industrial conditions, its cost, physical and functional depreciation and obsolescence and replacement cost, and all other factors which would assist in determining the fair and reasonable market value of the property but the actual value shall not be determined by use of only one such factor. The following shall not be taken into consideration: Special value or use value of the property to its present owner, and the good will or value of a business which uses the property as distinguished from the value of the property as property. Upon adoption of uniform rules by the revenue department or succeeding authority covering assessments and valuations of such properties, said valuation on such properties shall be determined in accordance therewith for assessment purposes to assure uniformity, but such rules shall not be inconsistent with or change the foregoing means of determining the actual, market, taxable and assessed values.

3. "Actual value", "taxable value", or "assessed value" as used in other sections of the Code in relation to assessment of property for taxation shall mean the valuations as determined by this section; however, other provisions of the Code providing special methods or formulas for assessing or valuing specified property shall remain in effect, but this section shall be applicable to the extent consistent with such provisions. The assessor and department of revenue and finance shall disclose at the written request of the taxpayer all information in any formula or method used to determine the actual value of the taxpayer's property.

The burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate, inequitable or capricious; however, in protest or appeal proceedings when the complainant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed.

4. For valuations established as of January 1, 1978, agricultural and residential property shall be assessed at a percentage of the actual value of each class of property. The percentage shall be determined for each class of property by the director of revenue for the state in accordance with the provisions of this section. For valuations established as of January 1, 1978, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend shall be the total equalized value of such property in the state in 1975, adjusted for additions or deletions to said value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment submitted in 1976 and 1977, plus six percent of the 1975 equalized value of such property or the amount of value added by the revaluation of existing properties in 1976, 1977 and 1978 whichever is less. The divisor shall be the total value of such property in the state as reported by the assessors on the abstracts of assessment submitted in 1977, plus the amount of value added in 1978 by the revaluation of existing properties.

5. For valuations established as of January 1, 1979, the percentage of actual value at which agricultural and residential property shall be assessed shall be the quotient of the dividend and divisor as defined in this section. The dividend for each class of property shall be the dividend as determined for each class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, plus six percent of the amount so determined. However, if the difference between the dividend so determined for either class of

property and the dividend for that class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, is less than six percent, the 1979 dividend for the other class of property shall be the dividend as determined for that class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, plus a percentage of the amount so determined which is equal to the percentage by which the dividend as determined for the other class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, is increased in arriving at the 1979 dividend for the other class of property. The divisor for each class of property shall be the total actual value of all such property in the state in the preceding year, as reported by the assessors on the abstracts of assessment submitted for 1978, plus the amount of value added to said total actual value by the revaluation of existing properties in 1979 as equalized by the director of revenue pursuant to section 441.49. The director shall utilize information reported on abstracts of assessment submitted pursuant to section 441.45 in determining such percentage. For valuations established as of January 1, 1980, and each year thereafter, the percentage of actual value as equalized by the director of revenue and finance as provided in section 441.49 at which agricultural and residential property shall be assessed shall be calculated in accordance with the methods provided herein including the limitation of increases in agricultural and residential assessed values to the percentage increase of the other class of property if the other class increases less than the allowable limit adjusted to include the applicable and current values as equalized by the director of revenue and finance, except that any references to six percent in this subsection shall be four percent.

6. For valuations established as of January 1, 1979, commercial property and industrial property, excluding properties referred to in section 427A.1, subsection 6, shall be assessed as a percentage of the actual value of each class of property. The percentage shall be determined for each class of property by the director of revenue for the state in accordance with the provisions of this section. For valuations established as of January 1, 1979, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend for each class of property shall be the total actual valuation for each class of property established for 1978, plus six percent of the amount so determined. The divisor for each class of property shall be the valuation for each class of property established for 1978, as reported by the assessors on the abstracts of assessment for 1978, plus the amount of value added to the total actual value by the revaluation of existing properties in 1979 as equalized by the director of revenue pursuant to section 441.49. For valuations established as of January 1, 1979, property valued by the department of revenue pursuant to chapters 428, 433, 436, 437, and 438 shall be considered as one class of property and shall be assessed as a percentage of its actual value. The percentage shall be determined by the director of revenue in accordance with the provisions of this section. For valuations established as of January 1, 1979, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend shall be the total actual valuation established for 1978 by the department of revenue, plus ten percent of the amount

so determined. The divisor for property valued by the department of revenue pursuant to chapters 428, 433, 436, 437, and 438 shall be the valuation established for 1978, plus the amount of value added to the total actual value by the revaluation of the property by the department of revenue as of January 1, 1979. For valuations established as of January 1, 1980, commercial property and industrial property, excluding properties referred to in section 427A.1, subsection 6, shall be assessed at a percentage of the actual value of each class of property. The percentage shall be determined for each class of property by the director of revenue for the state in accordance with the provisions of this section. For valuations established as of January 1, 1980, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend for each class of property shall be the dividend as determined for each class of property for valuations established as of January 1, 1979, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1979, plus four percent of the amount so determined. The divisor for each class of property shall be the total actual value of all such property in 1979, as equalized by the director of revenue pursuant to section 441.49, plus the amount of value added to the total actual value by the revaluation of existing properties in 1980. The director shall utilize information reported on the abstracts of assessment submitted pursuant to section 441.45 in determining such percentage. For valuations established as of January 1, 1980, property valued by the department of revenue pursuant to chapters 428, 433, 436, 437, and 438 shall be assessed at a percentage of its actual value. The percentage shall be determined by the director of revenue in accordance with the provisions of this section. For valuations established as of January 1, 1980, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend shall be the total actual valuation established for 1979 by the department of revenue, plus eight percent of the amount so determined. The divisor for property valued by the department of revenue pursuant to chapters 428, 433, 436, 437, and 438 shall be the valuation established for 1979, plus the amount of value added to the total actual value by the revaluation of the property by the department of revenue as of January 1, 1980. For valuations established as of January 1, 1981, and each year thereafter, the percentage of actual value as equalized by the director of revenue and finance as provided in section 441.49 at which commercial property and industrial property, excluding properties referred to in section 427A.1, subsection 6, shall be assessed shall be calculated in accordance with the methods provided herein, except that any references to six percent in this subsection shall be four percent. For valuations established as of January 1, 1981, and each year thereafter, the percentage of actual value at which property valued by the department of revenue and finance pursuant to chapters 428, 433, 436, 437, and 438 shall be assessed shall be calculated in accordance with the methods provided herein, except that any references to ten percent in this subsection shall be eight percent. Beginning with valuations established as of January 1, 1979, and each year thereafter, property valued by the department of revenue and finance pursuant to chapter 434 shall also be assessed at a percentage of its actual value which percentage shall be equal to the percentage determined by the director of revenue and finance for commercial property, industrial property, or property valued by the department of revenue and finance pursuant to chapters 428, 433, 436, 437, and 438, whichever is lowest.

7. Beginning with valuations established as of January 1, 1978, the assessors shall report the aggregate taxable values and the number of dwellings located on agricultural land and the aggregate taxable value of all other structures on agricultural land. Beginning with valuations established as of January 1, 1981,

the agricultural dwellings located on agricultural land shall be valued at their market value as defined in this section and agricultural dwellings shall be valued as rural residential property and shall be assessed at the same percentage of actual value as is all other residential property.

8. For the purpose of computing the debt limitations for municipalities, political subdivisions and school districts, the term "actual value" means the "actual value" as determined by subsections 1 to 3 of this section without application of any percentage reduction and entered opposite each item, and as listed on the tax list as provided in section 443.2 as "actual value".

Whenever any board of review or other tribunal changes the assessed value of property, all applicable records of assessment shall be adjusted to reflect such change in both assessed value and actual value of such property.

9. a. Any normal and necessary repairs to a building, not amounting to structural replacements or modification, shall not increase the taxable value of the building. This paragraph applies only to repairs of two thousand five hundred dollars or less per building per year.

b. Notwithstanding paragraph "a" of this subsection, any construction or installation of gas production systems using waste or manure to produce gas completed on property classified as agricultural, residential, commercial, or industrial property shall not increase the actual, assessed and taxable values of the property for assessment years beginning on January 1, 1979 and ending on or before December 31, 1985. In addition, notwithstanding paragraph "a" of this subsection, any construction or installation of a solar energy system on property so classified shall not increase the actual, assessed and taxable values of the property for five full assessment years.

c. As used in this subsection "solar energy system" means either of the following:

(1) A system of equipment capable of collecting and converting incident solar radiation or wind energy into thermal, mechanical or electrical energy and transforming these forms of energy by a separate apparatus to storage or to a point of use which is constructed or installed after January 1, 1978.

(2) A system that uses the basic design of the building to maximize solar heat gain during the cold season and to minimize solar heat gain in the hot season and that uses natural means to collect, store and distribute solar energy which is constructed or installed after January 1, 1981.

In assessing and valuing the property for tax purposes, the assessor shall disregard any market value added by a solar energy system to a building. The director of revenue and finance shall adopt rules, after consultation with the department of natural resources, specifying the types of equipment and structural components to be included under the guidelines provided in this subsection.

10. Not later than November 1, 1979 and November 1 of each subsequent year, the director shall certify to the county auditor of each county the percentages of actual value at which residential property, agricultural property, commercial property, industrial property, and property valued by the department of revenue and finance pursuant to chapters 428, 433, 434, 436, 437, and 438 in each assessing jurisdiction in the county shall be assessed for taxation. The county auditor shall proceed to determine the assessed values of agricultural property, residential property, commercial property, industrial property, and property valued by the department of revenue and finance pursuant to chapters 428, 433, 434, 436, 437, and 438 by applying such percentages to the current actual value of such property, as reported to the county auditor by the assessor, and the assessed values so determined shall be the taxable values of such properties upon which the levy shall be made.

11. The percentage of actual value computed by the director for agricultural property, residential property, commercial property, industrial property and

property valued by the department of revenue and finance pursuant to chapters 428, 433, 434, 436, 437, and 438 and used to determine assessed values of those classes of property does not constitute a rule as defined in section 17A.2, subsection 7.

89 Acts, ch 176, §1 SF 515; 89 Acts, ch 296, §63 SF 141  
Subsection 1, paragraphs a and c amended  
Subsection 1, paragraph b, NEW unnumbered paragraph 2

**441.24 Refusal to furnish statement.**

1. If a person refuses to furnish the verified statements required in connection with the assessment of property by the assessor, or to list the corporation's or person's property, the director of revenue and finance, or assessor, as the case may be, shall proceed to list and assess the property according to the best information obtainable, and shall add to the taxable valuation one hundred percent thereof, which valuation and penalty shall be separately shown, and shall constitute the assessment; and if the valuation of the property is changed by a board of review, or on appeal from a board of review, a like penalty shall be added to the valuation thus fixed.

2. However, all or part of the penalty imposed under this section may be waived by the board of review upon application to the board by the assessor or the property owner. The waiver or reduction in the penalty shall be allowed only on the valuation of real property against which the penalty has been imposed.

89 Acts, ch 296, §64 SF 141  
Subsection 1 amended

**441.26 Assessment rolls and books.**

The director of revenue and finance shall each year prescribe the form of assessment roll to be used by all assessors in assessing property, in this state, also the form of pages of the assessor's assessment book. The assessment rolls shall be in a form that will permit entering, separately, the names of all persons assessed, and shall also contain a notice in substantially the following form:

If you are not satisfied that the foregoing assessment is correct, you may file a protest against such assessment with the board of review on or after April 16, to and including May 5, of the year of the assessment, such protest to be confined to the grounds specified in section 441.37.

Dated:..... day of ....., 19.....

.....  
County/City Assessor.

The notice in 1981 and each odd-numbered year thereafter shall contain a statement that the assessments are subject to equalization pursuant to an order issued by the director of revenue and finance, that the county auditor shall give notice on or before October 15 by publication in an official newspaper of general circulation to any class of property affected by the equalization order, and that the board of review shall be in session from October 15 to November 15 to hear protests of affected property owners or taxpayers whose valuations have been adjusted by the equalization order.

The assessment rolls shall be used in listing the property and showing the values affixed to the property of all persons assessed. The rolls shall be made in duplicate. The duplicate roll shall be signed by the assessor, detached from the original and delivered to the person assessed if there has been an increase or decrease in the valuation of the property. If there has been no change in the evaluation, the information on the roll may be printed on computer stock paper and preserved as required by this chapter. If the person assessed requests in writing a copy of the roll, the copy shall be provided to the person. The pages of the assessor's assessment book shall contain columns ruled and headed for the

information required by this chapter and that which the director of revenue and finance deems essential in the equalization work of the director. The assessor shall return all assessment rolls and schedules to the county auditor, along with the completed assessment book, as provided in this chapter, and the county auditor shall carefully keep and preserve the rolls, schedules and book for a period of five years from the time of its filing in the county auditor's office.

Beginning with valuations for January 1, 1977 and each succeeding year, for each parcel of property entered in the assessment book, the assessor shall list the classification of the property.

89 Acts, ch 296, §65 SF 141  
Unnumbered paragraphs 1 and 4 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, 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.

89 Acts, ch 296, §66 SF 141  
Subsection 1 amended

#### **441.45 Abstract to state department of revenue and finance.**

The county assessor of each county and each city assessor shall, on or before July 1 of each year, make out and transmit to the department of revenue and finance an abstract of the real property in the assessor's county or city, as the case may be, and file a copy of the abstract with the county auditor, in which the assessor shall set forth:

1. The number of acres of land and the aggregate taxable values of the land, exclusive of city lots, returned by the assessors, as corrected by the board of review.
2. The aggregate taxable values of real estate by class in each township and city in the county, returned as corrected by the board of review.
3. Other facts required by the director of revenue and finance.

If a board of review continues in session beyond June 1, under sections 441.33 and 441.37, the abstract of the real property shall be made out and transmitted to

the department of revenue and finance within fifteen days after the date of final adjournment by the board.

89 Acts, ch 296, §67 SF 141  
Section amended

## CHAPTER 442

### SCHOOL FOUNDATION PROGRAM

Chapter is repealed June 30, 1991; 87 Acts, ch 224, §81

#### 442.2 Foundation property tax.

1. Each school district shall cause to be levied each year, for the school general fund, a foundation property tax of five dollars and forty cents per thousand dollars of assessed valuation on all taxable property in the district. For the purpose of this chapter, a school district is defined as a school corporation organized under chapter 274.

However, commencing with the budget year beginning July 1, 1988, a reorganized school district shall cause a foundation property tax of four dollars and forty cents per thousand dollars of assessed valuation to be levied on all taxable property which, in the year preceding a reorganization, was within a school district affected by the reorganization as defined in section 275.1, or in the year preceding a dissolution was a part of a school district that dissolved if the dissolution proposal has been approved by the director of the department of education pursuant to section 275.55. In the year preceding the reorganization or dissolution, the school district affected by the reorganization or the school district that dissolved must have had a certified enrollment of fewer than six hundred in order for the four-dollar-and-forty-cent levy to apply. In succeeding school years, the foundation property tax levy on that portion shall be increased twenty cents per year until it reaches the rate of five dollars and forty cents per thousand dollars of assessed valuation.

For purposes of this section, a reorganized school district is one which absorbed at least thirty percent of the enrollment of the school district affected by a reorganization or dissolved during a dissolution and in which reorganization or dissolution was approved in an election pursuant to sections 275.18 and 275.20 or section 275.55 prior to July 1, 1989, and the reorganization or dissolution takes effect on or after July 1, 1988.

2. For purposes of section 442.1, the "amount per pupil of foundation property tax" and the "money raised by the foundation property tax" do not include the tax levied under subsection 1 on the property of a railway corporation or its trustee which corporation has been declared bankrupt or is in bankruptcy proceedings.

The reduced property tax rates of those reorganized districts that met the requirements of this section prior to July 1, 1989, shall continue to increase as provided in this section until they reach five dollars and forty cents.

89 Acts, ch 135, §117, 118 HF 535  
Subsection 1, unnumbered paragraph 3 amended  
NEW unnumbered paragraph at end of section

#### 442.9A Supplemental aid.

Notwithstanding section 442.9, commencing with the budget year beginning July 1, 1987, if the rate of the additional property tax levy determined under section 442.9 for a budget year for a reorganized school district is higher than the rate of additional property tax levy determined under section 442.9 for the year previous to the reorganization for a school district that had a certified enrollment of less than six hundred and that was within the school districts affected by the reorganization as defined in section 275.1, the department of management shall

reduce the rate of the additional property tax levy in the portion of the reorganized district where the new rate is higher, to the rate that was levied in that portion of the district during the year preceding the reorganization, for the five-year period provided in this section. The department of management shall pay to each reorganized school district during each of the first five years of existence of the reorganized district as supplemental aid, moneys equal to the difference in revenues that would have been collected under the additional property tax levy calculated under section 442.9 and the rate determined under this section.

For the school year beginning July 1, 1987 and succeeding school years, there is appropriated from the general fund of the state to the department of management an amount sufficient to pay the supplemental aid to school districts under this section. Supplemental aid shall be paid in the manner provided in section 442.26.

For the purpose of the department of management's determination of the portion of a school district's budget that was property tax and the portion that was state aid, supplemental aid shall be considered property tax.

For purposes of this section, a reorganized school district is one in which reorganization was approved in an election pursuant to sections 275.18 and 275.20 prior to July 1, 1989, and will take effect on or after July 1, 1986.

89 Acts, ch 135, §119 HF 535  
Unnumbered paragraph 4 amended

#### **442.12 School budget review committee.**

A school budget review committee is established in the department of education and consists of the director of the department of education, the director of the department of management, and three members who are knowledgeable in the areas of Iowa school finance or public finance issues appointed by the governor to represent the public. At least one of the public members shall possess a master's or doctoral degree in which areas of school finance, economics, or statistics are an integral component, or shall have equivalent experience in an executive administrative or senior research position in the education or public administration field. The members appointed by the governor shall serve staggered three-year terms beginning and ending as provided in section 69.19 and are subject to senate confirmation as provided in section 2.32. The committee shall meet and hold hearings each year and shall continue in session until it has reviewed budgets of school districts, as provided in section 257.31.\* It may call in school board members and employees as necessary for the hearings. Legislators shall be notified of hearings concerning school districts in their constituencies.

The committee shall adopt its own rules of procedure under chapter 17A. The director of the department of education shall serve as chairperson, and the director of the department of management shall serve as secretary. The committee members representing the public are entitled to receive their necessary expenses while engaged in their official duties. Members shall be paid a per diem at the rate specified in section 7E.6. Per diem and expense payments shall be made from appropriations to the department of education.

The department of education shall employ a staff member to assist the school budget review committee.

89 Acts, ch 135, §120 HF 535  
1989 amendments take effect May 1, 1990; terms of members appointed prior to that date expire April 30, 1990; 89 Acts, ch 135, §133, 139 HF 535

See Code editor's note

\*Section 442.13 probably intended; corrective legislation is pending

Section stricken and rewritten

#### **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 either of the following purposes:

a. 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.

b. The costs associated with the demolition of an unused school building, or the conversion of an unused school building for community use, in a school district involved in a dissolution or reorganization under chapter 275 which are incurred within three years of the dissolution or reorganization.

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 the amount 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 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.

89 Acts, ch 83, §52 SF 112  
Subsection 14, unnumbered paragraph 2 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 is 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 is 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 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.

89 Acts, ch 251, §35 SF 154  
Limit on total surtax, §298.14  
Unnumbered paragraph 2 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, which use the services of a teacher employed by another school district, or which jointly employ

and share the services of school superintendents under section 280.15 or 273.7A, 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 under a whole grade sharing agreement. The additional weighting of one-tenth shall be assigned by the school budget review committee to a district for a maximum of five years. If the school district reorganizes during that five-year period, the assignment of the additional weighting shall be transferred to the reorganized district until the expiration of the five-year period.

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 which has approved a contract on or after October 1, 1989, for which the superintendent is employed jointly under section 280.15 or 273.7A, are assigned a weighting of one plus twenty-five thousandths for each superintendent who is jointly employed times the percent of the superintendent's time in which the superintendent is employed in the school district. However, the total additional weighting assigned under this subsection for a budget year for a school district is seven and one-half and the total additional weighting that may be added cumulatively to the enrollment of school districts sharing a superintendent is twelve and one-half.

Effective July 1, 1988, the additional weighting assigned under this subsection shall be assigned to a district for a maximum of five years. Additional weighting assigned under this subsection for contracts approved by a board of directors between July 1, 1988, and September 30, 1989, shall be continued under this subsection for a maximum of five years.

If the school district reorganizes during the five-year period for which weighting is assigned, the assignment of the additional weighting shall be transferred to the reorganized district until the expiration of the five-year period.

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.

Effective July 1, 1988, the additional weighting assigned under this subsection may be assigned to a district for a maximum of five years and, thereafter, the additional weighting shall not be assigned to the same district under this section, but may be assigned under section 442.39A.

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.

89 Acts, ch 135, §121 HF 535  
Unnumbered paragraph 1 and subsections 2 and 4 amended

#### **442.39A Supplementary weighting and school reorganization.**

In determining weighted enrollment under section 442.4, if the board of directors of a school district has approved a contract for sharing under section 442.39, subsection 2 or 4, and the school district has approved a reorganization prior to July 1, 1989, the reorganized school district shall include, for a period of five years following the effective date of the reorganization, additional pupils added by the application of the supplementary weighting plan, equal to the pupils added by the application of the supplementary weighting plan in the year preceding the reorganization. However, the weighting shall be reduced by the supplementary weighting added for a pupil whose residency is not within the reorganized district. For purposes of this section, a reorganized district is one in which the reorganization was approved in an election pursuant to sections 275.18 and 275.20 and takes effect on or after July 1, 1986.

89 Acts, ch 135, §122 HF 535  
Section amended

## **CHAPTER 443**

### **TAX LIST**

#### **443.2 Tax list.**

Before the first day of July in each year, the county auditor shall transcribe the assessments of the townships and cities into a book or record, to be known as the tax list, properly ruled and headed, with separate columns, in which shall be entered the names of the taxpayers, descriptions of lands, number of acres and value, numbers of city lots and value, and each description of tax, with a column for polls and one for payments, and shall complete it by entering the amount due on each installment, separately, and carrying out the total of both installments. The total of all columns of each page of each book or other record shall balance with the tax totals. After computing the amount of tax due and payable on each property, the county auditor shall round the total amount of tax due and payable on the property to the nearest even whole dollar.

The county auditor shall list the aggregate actual value and the aggregate taxable value of all taxable property within the county and each political subdivision on the tax list in order that the actual value of the taxable property within the county or a political subdivision may be ascertained and shown by the tax list for the purpose of computing the debt-incurring capacity of the county or political subdivision. As used in this section, "actual value" is the value

determined under section 441.21, subsections 1 to 3, prior to the reduction to a percentage of actual value as otherwise provided in section 441.21.

89 Acts, ch 296, §68 SF 141  
Unnumbered paragraph 1 amended

## CHAPTER 445

### COLLECTION OF TAXES

#### 445.36 Payment—installments.

1. For fiscal years after July 1, 1975, the property taxes which become delinquent during the fiscal year shall be for the previous fiscal year.

2. No demand of taxes shall be necessary, but it shall be the duty of every person subject to taxation to attend at the office of the treasurer, at some time between the first Monday in August and September 1 following, and pay the person's taxes in full, or one-half thereof before September 1 succeeding the levy, and the remaining half before March 1 following. However, if the first installment of a person's taxes are delinquent and not paid as of February 15, the treasurer shall mail a notice to the taxpayer of the delinquency and the due date for the second installment. Failure to receive a mailed notice is not a defense to the payment of the tax and any interest and penalty due.

89 Acts, ch 214, §3 HF 728  
Subsection 2 amended

#### 445.39 Interest as penalty.

If the first installment of taxes is not paid by the delinquent date specified in section 445.37, the installment shall become due and draw interest, as a penalty, of one and one-half percent per month until paid, from the delinquent date following the levy; and if the last half is not paid by April 1 following the levy, the same interest shall be charged from the date the last half became delinquent. However, after April 1 in a fiscal year when late certification of the tax list results in a penalty date later than October 1 for the first installment, penalties on delinquent first installments shall accrue as if certification were made on the previous June 30. The interest penalty imposed under this section shall be computed to the nearest whole dollar and the amount of interest shall not be less than one dollar.

89 Acts, ch 214, §4 HF 728  
Section amended

## CHAPTER 446

### TAX SALE

#### 446.9 Notice of sale—service—publication—costs.

1. A notice of the time and place of the annual tax sale shall be served upon the person in whose name the real estate subject to sale is taxed. The treasurer shall serve the notice by sending it by regular first class mail to the person's last known address not later than May 1 of each fiscal year. The notice shall contain a description of the real estate to be sold which is clear, concise, and sufficient to distinguish the real estate to be sold from all other parcels. It shall also contain the amount of delinquent taxes, both regular and special, for which the real estate is liable each year, the amount of the penalty, interest, and the actual cost of publication in an official newspaper, all to be incorporated as a single sum. The notice shall contain a statement that, after the sale, if the real estate is not

redeemed within the period provided in chapter 447, the right to redeem expires and a deed may be issued.

2. Publication of the time and place of the annual tax sale shall be made once by the treasurer in an official newspaper in the county at least one week, but not more than three weeks, before the day of sale. The publication shall contain a description of the real estate to be sold that is clear, concise, and sufficient to distinguish the real estate to be sold from all other parcels. All items offered for sale pursuant to section 446.18 may be indicated by an "s" or by an asterisk. The publication shall also contain the name of the person in whose name the real estate to be sold is taxed, the amount of delinquent taxes, both regular and special, for which the real estate is liable for each year, the amount of the penalty, interest, and the actual cost of publication in an official newspaper, all to be incorporated as a single sum. The publication shall contain a statement that, after the sale, if the real estate is not redeemed within the period provided in chapter 447, the right to redeem expires and a deed may be issued.

3. In addition to the notice required by subsection 1 and the publication required by subsection 2, the treasurer shall send, at least one week, but not more than three weeks, before the day of sale, a notice of sale in the form prescribed by subsection 1, by regular first class mail, to any mortgagee having a lien upon the real estate, a vendor of the real estate under a recorded contract of sale, a lessor who has a recorded lease or memorandum of a recorded lease, and to any other person who has an interest of record in the real estate, if the mortgagee, vendor, lessor, or other person having an interest of record has done both of the following:

a. Has requested, on a form prescribed by the treasurer, that notice of sale be sent to the person.

b. Has filed the request form with the treasurer at least one month prior to the date of sale, together with a fee of twenty-five dollars.

The request for notice is valid for a period of five years from the date of filing with the treasurer. The request for notice may be renewed for additional periods of five years by the procedure specified in this subsection.

4. Notice required by subsections 1 and 3 shall be deemed made and completed when the notice is enclosed in a sealed envelope with the proper postage on the envelope, addressed to the person entitled to receive it at the person's last known mailing address, and is deposited in a mail receptacle provided by the United States postal service.

89 Acts, ch 214, §5 HF 728  
Subsections 1 and 2 amended

## CHAPTER 447

### TAX REDEMPTION

#### 447.9 Notice of expiration of right of redemption.

After two years and nine months from the date of sale, or after nine months from the date of a sale made under section 446.18, 446.38 or 446.39, the holder of the certificate of purchase may cause to be served upon the person in possession of the real estate, and also upon the person in whose name the real estate is taxed, in the manner provided for the service of original notices in R.C.P. 56.1, if the person resides in Iowa, or otherwise as provided in section 446.9, subsection 1, a notice signed by the certificate holder or the certificate holder's agent or attorney, stating the date of sale, the description of the property sold, the name of the purchaser, and that the right of redemption will expire and a deed for the land be made unless redemption is made within ninety days from the completed service of the notice. When the notice is given by a county as a holder of a certificate of purchase the notice shall be signed by the county treasurer or the county attorney,

and when given by a city, it shall be signed by the city officer designated by resolution of the council. When the notice is given by the Iowa finance authority or a city or county agency holding the property as part of an Iowa homesteading project, it shall be signed on behalf of the agency or authority by one of its officers, as authorized in rules of the agency or authority.

Service of the notice shall also be made by mail on any mortgagee having a lien upon the real estate, a vendor of the real estate under a recorded contract of sale, a lessor who has a recorded lease or memorandum of a recorded lease, and any other person who has an interest of record, at the person's last known address, if the mortgagee, vendor, lessor, or other person has filed a request for notice, as prescribed in section 446.9, subsection 3, and on the state of Iowa in case of an old-age assistance lien by service upon the state department of human services. The notice shall also be served on any city where the real estate is situated.

89 Acts, ch 66, §1 SF 176  
Section amended

#### **447.12 When service deemed complete—presumption.**

Service is complete only after an affidavit has been filed with the treasurer, showing the making of the service, the manner of service, the time when and place where made, and under whose direction the service was made. The affidavit shall be made by the holder of the certificate or by the holder's agent or attorney, and in either of the latter cases stating that the affiant is the agent or attorney of the holder of the certificate. The affidavit shall be filed by the treasurer and entered upon the sale book opposite the entry of the sale, and the record or affidavit is presumptive evidence of the completed service of the notice. The right of redemption shall not expire until ninety days after service is complete. When the property is held by a city or county, a city or county agency, or the Iowa finance authority, for use in an Iowa homesteading project, whether or not the property is the subject of a conditional conveyance granted under the project, the affidavit shall be made by the treasurer of the county or the county attorney, a city officer designated by resolution of the council, or on behalf of the agency or authority, by one of its officers as authorized in rules of the agency or authority.

89 Acts, ch 66, §2 SF 176  
Section amended

## CHAPTER 450

### INHERITANCE TAX

#### **450.22 Administration avoided—inheritance tax duties required.**

When the heirs or persons entitled to inherit the property of an estate subject to tax under this chapter desire to avoid the appointment of a personal representative as provided in section 450.21, and in all instances where real estate is involved and there are no regular probate proceedings, they or one of them shall file under oath the inventories required by section 633.361 and the required reports, perform all the duties required by this chapter of the personal representative, and file the inheritance tax return. However, this section does not apply and a return is not required even though real estate is part of the assets subject to tax under this chapter, if all of the assets are held in joint tenancy with right of survivorship between husband and wife alone. When this section applies, proceedings for the collection of the tax when a personal representative is not

appointed, shall conform as nearly as possible to proceedings under this chapter in other cases.

89 Acts, ch 251, §36 SF 154  
1989 amendment retroactive to January 1, 1988, for estates of decedents dying on or after that date; 89 Acts, ch 251, §42 SF 154  
Section amended

#### **450.37 Value for computing the tax.**

1. Unless the value has been determined under chapter 450B, the tax shall be computed based upon one of the following:

a. The fair market value of the property in the ordinary course of trade determined under subsection 2.

b. The alternate value of the property, if the personal representative so elects, that has been established for federal estate tax purposes under section 2032 of the Internal Revenue Code. The election shall be exercised on the return by the personal representative or other person signing the return, within the time prescribed by law for filing the return or before the expiration of any extension of time granted for filing the return.

2. Fair market value in the ordinary course of trade shall be established by agreement, including an agreement to accept the values as finally determined for federal estate tax purposes. The agreement shall be between the department of revenue and finance, the personal representative, and the persons who have an interest in the property.

a. If an agreement has not been reached on the fair market value of real property in the ordinary course of trade, the director of revenue and finance has thirty days after the return is filed to request an appraisal under section 450.27. If an appraisal request is not made within the thirty-day period, the value listed on the return is the agreed value of the real property.

b. If an agreement is not reached on the fair market value of personal property in the ordinary course of trade, the personal representative or any person interested in the personal property may appeal to the director of revenue and finance for a revision of the department of revenue and finance's determination of the value and after the appeal hearing may seek judicial review of the director's decision. The provisions of section 450.94, subsection 3, relating to appeal of a determination of the department and review of the director's decision apply to an appeal and review made under this subsection.

89 Acts, ch 6, §6 SF 113  
1989 amendment to subsection 2 applies to estates of decedents dying on or after July 1, 1989; 89 Acts, ch 6, §8 SF 113  
Subsection 2, unnumbered paragraph 1 amended

#### **450.94 Return—determination—appeal.**

1. "Taxpayer" as used in this section means a person liable for the payment of tax as stated in section 450.5.

2. The taxpayer shall file an inheritance tax return on forms to be prescribed by the director of revenue and finance. When an inheritance tax return is filed, the department shall examine it and determine the correct amount of tax. If the amount paid is less than the correct amount due, the department shall notify the taxpayer of the total amount due together with any penalty and interest which shall be a sum certain if paid on or before the last day of the month in which the notice is postmarked, or on or before the last day of the following month if the notice is postmarked after the twentieth day of a month and before the first day of the following month.

3. If the amount paid is greater than the correct tax, penalty, and interest due, the department shall refund the excess, with interest after sixty days from the date of payment at the rate in effect under section 421.7, under the rules prescribed by the director. However, the director shall not allow a claim for refund or credit that has not been filed with the department within three years after the tax payment upon which a refund or credit is claimed became due, or one year

after the tax payment was made, whichever time is later. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within thirty days from the postmark date of the notice of determination of tax, penalty, and interest due 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. The decision of the director is final unless the appellant seeks judicial review of the director's decision under section 450.59 within sixty days after the postmark date of the notice of the director's decision.

4. Payments received must be credited first to the penalty and interest accrued and then to the tax due.

5. The amount of tax imposed under this chapter shall be assessed according to one of the following:

a. Within three years after the return is filed with respect to property reported on the final inheritance tax return.

b. At any time after the tax became due with respect to property not reported on the final inheritance tax return, but not later than three years after the omitted property is reported to the department on an amended return or on the final inheritance tax return if one was not previously filed.

In addition to the applicable periods of limitations for examination and determination specified in paragraphs "a" and "b", the department may make an examination and determination at any time within six months from the date of receipt by the department of written notice from the taxpayer of the final disposition of any matter between the taxpayer and the internal revenue service with respect to the federal estate, gift, or generation skipping transfer tax. In order to begin the running of the six months assessment period, the notice shall be in writing in form sufficient to inform the department of the final disposition of any matter with respect to the federal estate, gift, or generation skipping transfer tax, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice.

6. Notwithstanding the periods of limitation for filing a claim for refund in subsection 3, with respect to estates of decedents dying on or after July 1, 1982, a qualified heir who has paid an additional inheritance tax under section 450B.3 by reason of the cessation of the qualified use due to cash rent of the special use property by the surviving spouse, shall have until November 10, 1989, to file a claim for refund of the additional inheritance tax paid.

7. Notwithstanding the periods of limitations for filing a claim for refund in subsection 3, estates of decedents dying on or after July 1, 1985, which have elected to treat qualified terminable interest property as passing to the surviving spouse in fee, shall have until November 10, 1990, to make the election allowed under section 6152(c)(3) of the Technical and Miscellaneous Revenue Act of 1988 for joint and survivor annuities.

89 Acts, ch 285, §9 SF 186  
NEW subsections 6 and 7

## CHAPTER 451

### IOWA ESTATE TAX

#### 451.5 Duty of personal representative.

The personal representative of a decedent whose estate may be subject to the tax imposed by this chapter, shall file in the office of the director of revenue and finance, on or before the last day of the ninth month after the death of the

decendent, duplicate copies of the estate tax return provided for in the federal estate tax Act, and in like manner, duplicate copies of all supplemental or amended returns. The values of all items included in the gross estate, as shown by those returns, or supplemental or amended returns, shall be considered as the values of those items for the purposes of this chapter. In case of revaluation or correction of valuation of any of those items, either by supplemental or amended returns, or by the federal commissioner of internal revenue, or by an appellate tribunal by which the value is finally determined, the corrected values shall be considered as the values of those items for the purposes of this chapter.

89 Acts, ch 251, §37 SF 154  
 1989 amendment takes effect July 1, 1989, for estates of decedents dying on or after that date; 89 Acts, ch 251, §43 SF 154  
 Section amended

## CHAPTER 453

### DEPOSIT OF PUBLIC FUNDS

#### 453.1 Deposits in general—definitions.

1. All funds held in the hands of the following officers or institutions shall be deposited in one or more depositories first approved by the appropriate governing body as indicated: For the treasurer of state, by the executive council; for judicial officers and court employees, by the supreme court; for the county treasurer, recorder, auditor, and sheriff, by the board of supervisors; for the city treasurer or other designated financial officer of a city, by the city council; for the county public hospital or merged area hospital, by the board of hospital trustees; for a memorial hospital, by the memorial hospital commission; for a school corporation, by the board of school directors; for a city utility or combined utility system established under chapter 388, by the utility board; for a regional library established under chapter 303B, by the regional board of library trustees; and for an electric power agency as defined in section 28F.2, by the governing body of the electric power agency. However, the treasurer of state and the treasurer of each political subdivision or the designated financial officer of a city shall invest all funds not needed for current operating expenses in time certificates of deposit in approved depositories pursuant to this chapter or in investments permitted by section 452.10. The list of public depositories and the amounts severally deposited in the depositories are matters of public record. This subsection does not limit the definition of "public funds" contained in subsection 2.

2. As used in this chapter unless the context otherwise requires:

a. "Depository" means a bank or any office of a bank whose accounts are insured by the federal deposit insurance corporation, or a savings and loan association or a savings bank or any branch of a savings and loan association or savings bank whose accounts are insured by the federal savings and loan insurance corporation, or a credit union insured by the national credit union administration.

b. "Public funds" and "public deposits" mean the moneys of the state or a political subdivision or instrumentality of the state including a county, school corporation, special district, drainage district, unincorporated town or township, municipality, or municipal corporation or any agency, board, or commission of the state or a political subdivision; any court or public body noted in subsection 1; a legal or administrative entity created pursuant to chapter 28E; an electric power agency as defined in section 28F.2; and federal and state grant moneys of a quasi-public state entity that are placed in a depository pursuant to this chapter.

3. A deposit of public funds in a depository pursuant to this chapter shall be secured as follows:

a. If a depository is a savings and loan association, a savings bank, or an office of a savings and loan association or savings bank, then the public deposits in those depositories shall be secured pursuant to sections 453.16 through 453.19 and sections 453.23 and 453.24.

b. If a depository is a bank, credit union, or an office of a bank or credit union, then the public deposits in those depositories shall be secured pursuant to sections 453.22 through 453.24.

4. Ambiguities in the application of this section shall be resolved in favor of preventing the loss of public funds on deposit in a depository.

89 Acts, ch 39, §12 SF 500  
Subsection 1 amended

## CHAPTER 455

### LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS ON PETITION OR BY MUTUAL AGREEMENT

Transferred to §468.1 through §468.240; 89 Acts, ch 126 SF 479

## CHAPTER 455A

### DEPARTMENT OF NATURAL RESOURCES

Study of needs for lakes, water recreation, parks, forests, and other recreation areas; report January 1, 1991;  
89 Acts, ch 311, §13 HF 778

#### 455A.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. "*Director*" means the director of the department of natural resources.
2. "*Department*" means the department of natural resources created under section 455A.2.
3. "*Natural resource commission*" means the natural resource commission created under section 455A.5.
4. "*Environmental protection commission*" means the environmental protection commission created under section 455A.6.
5. "*Fund*" means the Iowa resources enhancement and protection fund created under section 455A.18.
6. "*Soil conservation division*" means the soil conservation division of the department of agriculture and land stewardship.

89 Acts, ch 236, §1 HF 769  
NEW subsections 5 and 6

#### 455A.5 Natural resource commission—appointment and duties.

1. A natural resource commission is created, which consists of seven members appointed by the governor for staggered terms of six years beginning and ending as provided in section 69.19. The appointees are subject to senate confirmation. The members shall be citizens of the state who have a substantial knowledge of the subjects embraced by chapter 107. 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. A member of the commission shall not hold any other state or federal office.
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 and adopt rules, pursuant to chapter 17A, necessary to provide for the effective administration of chapter 106, 107, 108, 108A, 109, 109A, 110, 110A, 110B, 111, 111B, 111D, 112, or 321G.

b. Hear appeals in contested cases pursuant to chapter 17A on matters relating to actions taken by the director under chapter 106, 107, 108, 108A, 109, 109A, 110, 110A, 110B, 111, 111B, 111D, 112, or 321G.

c. Approve or disapprove proposals for the acquisition or disposal of state lands and waters relating to state parks, recreational facilities, and wildlife programs, submitted by the director.

d. Approve the budget request prepared by the director for the programs authorized by chapters 106, 107, 108, 108A, 109, 109A, 110, 110A, 110B, 111, 111D, 112, and 321G. The commission may increase, decrease, or strike any item within the department budget request for the specified programs before granting approval.

89 Acts, ch 72, §1 HF 372  
Subsection 6, NEW paragraph d

#### **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, 455C, or 469.

c. Approve or disapprove the issuance of hazardous waste disposal site licenses under chapter 455B.

d. Approve the budget request prepared by the director for the programs authorized by chapters 455B, 455C, 455E, and 455F. The commission may increase, decrease, or strike any item within the department budget request for the specified programs before granting approval.

89 Acts, ch 72, §2 HF 372; 89 Acts, ch 296, §69 SF 141  
Subsection 6, paragraph b amended, NEW paragraph d

#### **455A.8 Brushy creek recreation area trails advisory board.**

1. The Brushy Creek recreation trails advisory board shall be organized within the parks and preserves division of the department and shall be composed of nine members including the following: the director of the department or the director's designee who shall serve as a nonvoting ex officio member, the park ranger responsible for the Brushy Creek recreation area, a member of the state advisory board for preserves established under chapter 111B, a person appointed by the governor, and six persons appointed by the legislative council. Each person appointed by the governor or legislative council must actively participate in recreational trail activities such as hiking, an equestrian sport, or a winter sport at the Brushy Creek recreation area. The voting members shall elect a chairperson at the board's first meeting each year.

2. Each member of the board shall serve three years, and shall be eligible for reappointment. However, the park ranger responsible for Brushy Creek shall be replaced by the ranger's successor. The person representing the state advisory board for preserves shall serve at the pleasure of the board. The members, other than the director or the director's designee and the park ranger, are entitled to actual expenses incurred in performance of the duties of the board. A majority of members constitutes a quorum, and the affirmative vote of a majority present 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 rights and perform all duties of the board. The board shall meet as required, but at least twice a year. The board shall meet upon call of the chairperson, or upon written request of three members of the board. Written notice of the time and place of the meeting shall be given to each member.

3. The board shall advise the department and the natural resource commission regarding issues and recommendations relating to the development and maintenance of trails and related activities at or adjacent to the Brushy Creek recreation area.

89 Acts, ch 311, §27 HF 778  
NEW section

#### **455A.9 through 455A.14 Reserved.**

#### RESOURCE ENHANCEMENT AND PROTECTION

#### **455A.15 Legislative findings.**

The general assembly finds that:

1. The citizens of Iowa have built and sustained their society on Iowa's air, soils, waters, and rich diversity of life. The well-being and future of Iowa depend on these natural resources.

2. Many human activities have endangered Iowa's natural resources. The state of Iowa has lost ninety-nine and nine-tenths percent of its prairies, ninety-eight percent of its wetlands, eighty percent of its woodlands, fifty percent of its topsoils, and more than one hundred species of wildlife since settlement in the early 1800's. There has been a significant deterioration in the quality of Iowa's surface waters and groundwaters.

3. The long-term effects of Iowa's natural resource losses are not completely known or understood, but detrimental effects are already apparent. Prevention of further loss is therefore imperative.

4. The air, waters, soils, and biota of Iowa are interdependent and form a complex ecosystem. Iowans have the right to inherit this ecosystem in a sustainable condition, without severe or irreparable damage caused by human activities.

89 Acts, ch 236, §2 HF 769  
NEW section

#### **455A.16 State resource enhancement policy.**

It is the policy of the state of Iowa to protect its natural resource heritage of air, soils, waters, and wildlife for the benefit of present and future citizens with the establishment of a resource enhancement program. The program shall be a long-term integrated effort to wisely use and protect Iowa's natural resources through the acquisition and management of public lands; the upgrading of public park and preserve facilities; environmental education, monitoring, and research; and other environmentally sound means. The resource enhancement program shall strongly encourage Iowans to develop a conservation ethic, and to make necessary changes in our activities to develop and preserve a rich and diverse natural environment.

89 Acts, ch 236, §3 HF 769  
NEW section

#### **455A.17 Iowa congress on resources enhancement and protection.**

1. Biennially, during even-numbered years, the director shall schedule and make the necessary arrangements for an Iowa congress on resources enhancement and protection. The congress shall be held within the state capitol complex during the summer months.

2. Prior to each congress, the director shall make arrangements to hold an assembly in each council of governments area of persons having an interest in resources enhancement and protection. The department shall promote attendance of interested persons at each assembly. The director shall call each assembly and serve as temporary chairperson. The department shall provide those attending with information regarding resource enhancement and protection expenditures. The assemblies shall identify opportunities for regional resource enhancement and protection and review and recommend changes in resource enhancement and protection policies, programs, and funding. The persons meeting at each assembly shall elect five persons as delegates to the congress on resources enhancement and protection.

3. The delegates to the congress on resources enhancement and protection shall organize, discuss, and make recommendations to the governor, the general assembly, and the natural resource commission regarding issues concerning resources enhancement and protection. The director shall call the congress and serve as temporary chairperson. The delegates are entitled to a per diem of forty dollars for expenses of office while attending the congress.

4. The expenses of the department in making the arrangements for and the conducting of the council of governments area assemblies and the congress on

resources enhancement and protection and the per diem for expenses of the delegates at the congress shall be paid from the funds appropriated for this purpose.

89 Acts, ch 236, §4 HF 769  
NEW section

#### **455A.18 Iowa resources enhancement and protection fund—audits.**

1. An Iowa resources enhancement and protection fund is created in the office of the treasurer of state. The fund consists of all revenues and all other moneys lawfully credited or transferred to the fund. The director shall certify monthly the portions of the fund that are allocated to the various accounts as provided under section 455A.19. The director shall certify before the twentieth of each month the portions of the fund resulting from the previous month's receipts to be allocated to the various accounts.

2. The auditor of state or a certified public accountant firm appointed by the auditor of state shall conduct annual audits of all accounts and transactions of the fund.

3. Notwithstanding section 453.7, interest or earnings on investments or time deposits of the funds in the Iowa resources enhancement and protection fund or any of its accounts shall be credited to the fund.

4. For each fiscal year of the fiscal period beginning July 1, 1990, and ending June 30, 2000, there is appropriated from the general fund, to the Iowa resources enhancement and protection fund, the amount of \$20,000,000 to be used as provided in this chapter.

Section 8.33 does not apply to moneys appropriated under this subsection. Notwithstanding section 453.7, interest or earnings on moneys appropriated under this subsection shall be credited to the Iowa resources enhancement and protection fund.

89 Acts, ch 236, §5 HF 769; 89 Acts, ch 311, §9 HF 778  
See Code editor's note  
NEW section

#### **455A.19 Allocation of fund proceeds.**

1. Upon receipt of any revenue, the director shall deposit the moneys in the Iowa resources enhancement and protection fund created pursuant to section 455A.18. The first three hundred fifty thousand dollars of the funds received for deposit in the fund annually shall be allocated to the conservation education board for the purposes specified in section 256.34. One percent of the revenue receipts shall be deducted and transferred to the administration fund provided for in section 107.17. All of the remaining receipts shall be allocated to the following accounts:

a. Twenty-eight percent shall be allocated to the open spaces account. At least ten percent of the allocations to the account shall be made available to match private funds for open space projects on the cost-share basis of not less than twenty-five percent private funds pursuant to the rules adopted by the natural resources commission. Five percent of the funds allocated to the open spaces account shall be used to fund the protected waters program. This account shall be used by the department to implement the statewide open space acquisition, protection, and development programs. The department shall give priority to acquisition and control of open spaces of statewide significance. The department shall also use these funds for developments on state property. The total cost of an open spaces project funded under this paragraph shall not exceed two million dollars unless a public hearing is held on the project in the area of the state affected by the project. Political subdivisions of the state shall be reimbursed for property tax dollars lost to open space acquisitions based on the reimbursement formula provided for in section 111E.4. There is appropriated from the open spaces account to the department the amount in that account, or so much thereof as is

necessary, to carry out the open spaces program as specified in this paragraph. An appropriation made under this paragraph shall continue in force for two fiscal years after the fiscal year in which the appropriation was made or until completion of the project. All unencumbered or unobligated funds remaining at the close of the fiscal year in which the project is completed or at the close of the final fiscal year, whichever date is earlier, shall revert to the open spaces account.

b. Twenty percent shall be allocated to the county conservation account.

(1) Thirty percent of the allocation to the county conservation account annually shall be allocated to each county equally.

(2) Thirty percent of the allocation to the county conservation account annually shall be allocated to each county on a per capita basis.

(3) Forty percent of the allocation to the county conservation account annually shall be held in an account in the state treasury for the natural resource commission to award to counties on a competitive grant basis by a project selection committee established in this subparagraph. Local matching funds are not required for grants awarded under this subparagraph. The project planning and review committee shall be composed of two staff members of the department and two county conservation board directors appointed by the director and a fifth member selected by a majority vote of the director's appointees. The natural resource commission, by rule, shall establish procedures for application, review, and selection of county projects submitted for funding. Upon recommendation of the project planning and review committee, the director shall award the grants.

(4) Funds allocated to the counties under subparagraphs (1), (2), and (3) may be used for land easements or acquisitions, capital improvements, stabilization and protection of resources, repair and upgrading of facilities, environmental education, and equipment. However, expenditures are not allowed for single or multi-purpose athletic fields, baseball or softball diamonds, tennis courts, golf courses, and other group or organized sport facilities. Funds may be used for county projects located within the boundaries of a city.

(5) Funds allocated pursuant to subparagraphs (2) and (3) shall only be allocated to counties dedicating property tax revenue at least equal to twenty-two cents per thousand dollars of the assessed value of taxable property in the county to county conservation purposes. State funds received under this paragraph shall not reduce or replace county tax revenues appropriated for county conservation purposes. The county treasurer shall submit documentation annually of the dedication of property tax revenue for county conservation purposes. The annual audit of the financial transactions and condition of a county shall certify compliance with requirements of this subparagraph. Funds not allocated to counties not qualifying for the allocations under subparagraph (2) as a result of this subparagraph shall be held in reserve for each county for two years. Counties qualifying within two years may receive the funds held in reserve. Funds not spent by a county within two years shall revert to the general pool of county funds for reallocation to other counties where needed.

(6) Each board of supervisors shall create a special resource enhancement account in the office of county treasurer and the county treasurer shall credit all resource enhancement funds received from the state in that account. Notwithstanding section 453.7, all interest earned on funds in the county resource enhancement account shall be credited to that account and used for the purposes authorized for that account.

(7) There is appropriated from the county conservation account to the department the amount in that account, or so much thereof as is necessary, to fund the provisions of this paragraph. An appropriation made under this paragraph shall continue in force for two fiscal years after the fiscal year in which the appropriation was made or until completion of the project for which the appropriation was made, whichever date is earlier. All unencumbered or unobligated funds remain-

ing at the close of the fiscal year in which a project funded pursuant to subparagraph (3) is completed or at the close of the third fiscal year, whichever date is earlier, shall revert to the county conservation account.

(8) Any funds received by a county under this paragraph may be used to match other state or federal funds, and multicounty or multiagency projects may be funded under this paragraph.

c. Twenty percent shall be allocated to the soil and water enhancement account. The moneys shall be used to carry out soil and water enhancement programs including, but not limited to, reforestation, woodland protection and enhancement, wildlife habitat preservation and enhancement, protection of highly erodible soils, and clean water programs. The division of soil conservation, by rule, shall establish procedures for eligibility, application, review, and selection of projects and practices to implement the requirements of this paragraph. There is appropriated from the soil and water enhancement account to the soil conservation division the amount in that account, or so much thereof as is necessary, to carry out the programs as specified in this paragraph. Remaining funds of the soil and water conservation account shall be allocated to the accounts of the water protection fund authorized in section 467F.4. Annually, fifty percent of the soil and water enhancement account funds, not to exceed one million dollars, shall be allocated to the water quality protection projects account. The balance of the funds shall be allocated to the water protection practices account. An appropriation made under this paragraph shall continue in force for two fiscal years after the fiscal year in which the appropriation was made or until completion of the project for which the appropriation was made, whichever date is earlier. All unencumbered or unobligated funds remaining at the close of the fiscal year in which the project is completed or at the close of the third fiscal year, whichever date is earlier, shall revert to the soil and water enhancement account.

d. Fifteen percent shall be allocated to a cities' parks and open space account. The moneys allocated in this paragraph may be used to fund competitive grants to cities to acquire, establish, and maintain natural parks, preserves, and open spaces. The grants may include expenditures for multipurpose trails, restroom facilities, shelter houses, and picnic facilities, but expenditures for single or multipurpose athletic fields, baseball or softball diamonds, tennis courts, golf courses, and other group or organized sport facilities requiring specialized equipment are excluded. The grants may be used for city projects located outside of a city's boundaries. The natural resource commission, by rule, shall establish procedures for application, review, and selection of city projects on a competitive basis. The rules shall provide for three categories of cities based on population within which the cities shall compete for grants. There is appropriated from the cities' parks and open space account to the department the amount in that account, or so much thereof as is necessary, to carry out the competitive grant program as provided in this paragraph.

e. Nine percent shall be allocated to the state land management account. The department shall use the moneys allocated to this account for maintenance and expansion of state lands and related facilities under its jurisdiction. The authority to expand state lands and facilities under this paragraph is limited to expansion of the state lands and facilities already owned by the state. There is appropriated from the state land management account to the department the moneys in that account, or so much thereof as is necessary, to implement a maintenance and expansion program for state lands and related facilities under the jurisdiction of the department.

f. Five percent shall be allocated to the historical resource grant and loan fund established pursuant to section 303.16. The department of cultural affairs shall use the moneys allocated to this fund to implement historical resource development programs as provided under section 303.16.

g. Three percent shall be allocated to the living roadway trust fund established under section 314.21 for the development and implementation of integrated roadside vegetation plans.

2. The moneys appropriated under this section shall remain in the appropriate account of the Iowa resources enhancement and protection 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 resources enhancement and protection 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.

89 Acts, ch 236, §6 HF 769  
NEW section

#### 455A.20 County resource enhancement committee.

1. A county resource enhancement committee is created in each county. The membership of the committee shall be as follows:

a. The chairpersons of the board of supervisors, county conservation board, commissioners of the soil and water district, and board of directors of each school district in the county. A chairperson may appoint a member of the chairperson's board or commission as the chairperson's designee on the committee. The chairperson or designee of a school district shall be a member of the county committee of the county in which a majority or the largest plurality of the district's students reside.

b. The mayor or the mayor's designee of each city in a county. The mayor's designee shall be a member of the city council. If a city is located in more than one county, the membership shall be on the county committee of the county in which the largest population of the city resides.

c. The chairperson or the chairperson's designee of each recognized farm organization having a county organization in the county. The designee shall be a member of the organization represented. The recognized farm organizations are the Iowa farm bureau federation, the Iowa farmers union, the Iowa grange, the national farmers organization, and the Iowa farm unity coalition.

d. The chairperson or the chairperson's designee of each of the following wildlife or conservation organizations having a recognized county organization:

- (1) Iowa Audubon council.
- (2) Iowa sportsmens federation.
- (3) Ducks unlimited.
- (4) Sierra club.
- (5) Pheasants forever.
- (6) The nature conservancy.
- (7) Iowa association of naturalists.
- (8) Izaak Walton league of America.

(9) Other recognized wildlife, conservation, environmental, recreation, or conservation education groups.

The designee shall be a member of the county chapter or organization in the county.

e. If a question arises as to whether a recognized county organization exists under paragraph "c" or "d", the question shall be decided by a majority vote of the members selected under paragraphs "a" and "b" excluding the representative of the county conservation board.

2. The duties of the county resource enhancement committee are to coordinate the resource enhancement program, plans, and proposed projects developed by

cities, county conservation board, and soil and water conservation district commissioners for funding under this division. The county committee shall review and comment upon all projects before they are submitted for funding under section 455A.19. Each county committee shall propose a five-year program plan which includes a one-year proposed expenditure plan and submit it to the department.

3. The initial meeting of the committee shall be called by the chairperson of the board of supervisors. The chairperson shall give written notice of the date, time, and location of the first meeting. The county committee shall meet at least annually to organize by selecting a chairperson, vice chairperson, and other officers as necessary. The committee shall adopt rules governing the conduct of its meetings, subject to chapter 21.

4. The board of supervisors shall provide a meeting room and the necessary secretarial and clerical assistance for the committee. The expenses shall be paid from the county general fund.

5. The members of the committee are not entitled to compensation or expenses related to their duties of office, except as may otherwise be provided by the boards, commissions, or organizations which the members represent.

89 Acts, ch 236, §7 HF 769  
NEW section

## CHAPTER 455B

### JURISDICTION OF DEPARTMENT OF NATURAL RESOURCES

#### 455B.105 Powers and duties of the commission.

The commission shall:

1. Establish policy for the implementation of programs under its jurisdiction. The commission shall appoint advisory committees to advise the commission and the director in carrying out their respective powers and duties.

2. Advise, consult, and co-operate with other agencies of the state, political subdivisions, and any other public or private agency to promote the orderly, efficient, and effective accomplishment of its responsibilities.

3. Adopt, modify, or repeal rules necessary to implement this chapter and the rules deemed necessary for the effective administration of the department. When the commission proposes or adopts rules to implement a specific federal environmental program and the rules impose requirements more restrictive than the federal program being implemented requires, the commission shall identify in its notice of intended action or adopted rule preamble each rule that is more restrictive than the federal program requires and shall state the reasons for proposing or adopting the more restrictive requirement. In addition, the commission shall include with its reasoning a financial impact statement detailing the general impact upon the affected parties. It is the intent of the general assembly that the commission exercise strict oversight of the operations of the department. The rules shall include departmental policy relating to the disclosure of information on a violation or alleged violation of the rules, standards, permits or orders issued by the department and keeping of confidential information obtained by the department in the administration and enforcement of this chapter. Rules adopted by the executive committee before January 1, 1981 shall remain effective until modified or rescinded by action of the commission.

4. Issue orders and directives necessary to insure integration and co-ordination of the programs administered by the department.

5. Make a concise annual report to the governor and the general assembly, which report shall contain information relating to the accomplishments and status of the programs administered by the department and include recommen-

dations for legislative action which may be required to protect or enhance the environment or to modernize the operation of the department or any of the programs or services assigned to the department and recommendations for the transfer of powers and duties of the department as deemed advisable by the commission. The annual report shall conform to the provisions of section 17.3.

6. Approve all contracts and agreements under this chapter between the department and other public or private persons or agencies.

7. Obtain an adequate public employees fidelity bond to cover those officers and employees of the department accountable for property or funds of this state.

8. Hold public hearings, except when the evidence to be received is confidential pursuant to this chapter or chapter 22, necessary to carry out its powers and duties. The commission may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to the hearings. A subpoena shall be issued and enforced in the same manner as provided in civil actions.

9. Upon request of at least four members of the commission before adopting or modifying a rule, the director shall prepare and publish with the notice required under section 17A.4, subsection 1, paragraph "a", a comprehensive estimate of the economic impact of the proposed rule or modification.

10. Appoint a water coordinator who shall coordinate requests from the public for information or assistance relating to the administration of water resources laws and programs and the resolution of water-related problems.

11. *a.* Adopt, by rule, procedures and forms necessary to implement the provisions of this chapter relating to permits or conditional permits. The commission may also adopt, by rule, a schedule of fees for permit and conditional permit applications and a schedule of fees which may be periodically assessed for administration of permits and conditional permits. In determining the fee schedules, the commission shall consider:

(1) The state's reasonable cost of reviewing applications, issuing permits and conditional permits, and checking compliance with the terms of the permits.

(2) The relative benefits to the applicant and to the public of permit and conditional permit review, issuance, and monitoring compliance.

It is the intention of the legislature that permit fees shall not cover any costs connected with correcting violation of the terms of any permit and shall not impose unreasonable costs on any municipality.

(3) The typical costs of the particular types of projects or activities for which permits or conditional permits are required, provided that in no circumstances shall fees be in excess of the actual costs to the department.

*b.* The fees collected by the department under this subsection shall be remitted to the treasurer of state and credited to the general fund of the state.

89 Acts, ch 72, §3 HF 372

Subsection 4 stricken and subsequent subsections renumbered

#### **455B.116 Pollution hotline program.**

The department shall establish a toll-free telephone number to allow citizens to report incidents resulting in pollution of the environment or damage to natural resources. The department shall receive and evaluate the reports and refer them to the appropriate state or local jurisdiction for initial investigation. The agency receiving a referral shall investigate the complaint, attempt to resolve the problem, and upon completion of the investigation, report to the department on the disposition of each complaint indicating how the problem was resolved.

The department shall use moneys appropriated to the waste volume reduction and recycling fund for the purpose of implementation of the program and shall use the moneys appropriated under section 455E.11 for the program to provide financial assistance to counties for investigation of complaints.

89 Acts, ch 272, §27 HF 753

NEW section

**455B.117 Results of environmental tests—public records.**

The results of any test, which test is relative to the purview of the department, and which test is conducted or performed by an independent entity at the request of a government body, as defined in section 22.1, or an agent or attorney for a government body, are public records pursuant to chapter 22.

A government body shall not be required to provide such test results to any person under this section until the agency head and agency's governing body have received a copy of the test results. A government body shall not be required to provide such test results if the confidentiality of such information is protected pursuant to section 22.7. However, following receipt of test results by an agency head and the agency's governing body, the agency head or agency's governing body shall not take action regarding such test results unless the test results have been made public knowledge for a period of not less than seven days.

89 Acts, ch 242, §1 SF 470  
NEW section

**455B.118 through 455B.130 Reserved.****455B.173 Duties.**

The commission shall:

1. Develop comprehensive plans and programs for the prevention, control and abatement of water pollution.

2. Establish, modify, or repeal water quality standards, pretreatment standards and effluent standards. The effluent standards may provide for maintaining the existing quality of the water of the state where the quality thereof exceeds the requirements of the water quality standards.

If the federal environmental protection agency has promulgated an effluent standard or pretreatment standard pursuant to section 301, 306 or 307 of the federal Water Pollution Control Act, a pretreatment or effluent standard adopted pursuant to this section shall not be more stringent than the federal effluent or pretreatment standard for such source. This section may not preclude the establishment of a more restrictive effluent limitation in the permit for a particular point source if the more restrictive effluent limitation is necessary to meet water quality standards, the establishment of an effluent standard for a source or class of sources for which the federal environmental protection agency has not promulgated standards pursuant to section 301, 306 or 307 of the federal Water Pollution Control Act. Except as required by federal law or regulation, the commission shall not adopt an effluent standard more stringent with respect to any pollutant than is necessary to reduce the concentration of that pollutant in the effluent to the level due to natural causes, including the mineral and chemical characteristics of the land, existing in the water of the state to which the effluent is discharged. Notwithstanding any other provision of this part of this division, any new source, the construction of which was commenced after October 18, 1972, and which was constructed as to meet all applicable standards of performance for the new source or any more stringent effluent limitation required to meet water quality standards, shall not be subject to any more stringent effluent limitations during a ten-year period beginning on the date of completion of construction or during the period of depreciation or amortization of the pollution control equipment for the facility for the purposes of section 167 and 169 or both sections of the Internal Revenue Code, whichever period ends first.

3. Establish, modify or repeal rules relating to the location, construction, operation, and maintenance of disposal systems and public water supply systems and specifying the conditions 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. *a.* Adopt rules relating to inspection, monitoring, recordkeeping, and reporting requirements for the owner or operator of any public water supply or any disposal system or of any source which is an industrial user of a publicly or privately owned disposal system.

*b.* Adopt rules which require each public water system regulated under chapter 455B to test the source water of that supply for the presence of synthetic organic chemicals and pesticides every two years. The rules shall enumerate the synthetic organic chemicals and pesticides, but not more than ten of each, for which the samples are to be tested; shall specify the approved analytical methods for conducting the analysis of water samples; and shall require the reporting of the analytical test results to the department. Priority for testing in the first year shall be those public water supplies for which none of the specified contaminants have been analyzed within the past five years. All of the laboratory analysis and data management shall be conducted by the center for health effects of environmental contamination. Sample collection shall be conducted using a standard sampling protocol by personnel within the department and the center for health effects of environmental contamination in conjunction with other ongoing field activities. Samples from private wells and samples from privately owned public water supplies shall be allowed to undergo the same analysis. The cost for the analysis provided for samples from private wells and privately owned public water supplies shall not exceed one hundred ninety-five dollars for the first year of testing. The department shall submit a report to the general assembly, by September 1 of each year, of the findings of the tests and the conclusions which may be drawn from the tests.

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.

89 Acts, ch 125, §1 HF 598  
Subsection 6 amended

#### **455B.190 Abandoned wells properly plugged.**

1. As used in this section:
  - a. "Class 1 well" means a well one hundred feet or less in depth and eighteen inches or more in diameter.
  - b. "Class 2 well" means a well more than one hundred feet in depth or less than eighteen inches in diameter or a bedrock well.
  - c. "Class 3 well" means a sandpoint well or a well fifty feet or less in depth constructed by joining a screened drive point with lengths of pipe and driving the assembly into a shallow sand and gravel aquifer.
  - d. "Department" means the department of natural resources.
  - e. "Designated agent" means a person other than the state, designated by a county board of supervisors to review and confirm that a well has been properly plugged.
  - f. "Filling materials" means agricultural lime. Filling materials may also include other materials, including soil, sand, gravel, crushed stone, and pea gravel as approved by the department.
  - g. "Owner" means the titleholder of the land where a well is located.

h. "Plug" means the closure of an abandoned well with plugging materials which will permanently seal the well from contamination by surface drainage, or permanently seal off the well from contamination into an aquifer.

i. "Plugging materials" means filling and sealing materials.

j. "Sealing materials" means bentonite. Sealing materials may also include neat cement, sand cement grout, or concrete as approved by the department.

k. "Well" means an abandoned well as defined in section 455B.171.

2. All wells 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. The schedule established by the department shall provide that to the fullest extent technically and economically feasible, all wells shall be properly plugged not later than July 1, 2000.

3. Wells shall be plugged as follows:

a. Class 1 wells shall be plugged by placing filling materials up to one foot below the static water level. At least one foot of sealing materials shall be placed on top of the filling materials up to the static water level, as a seal. Filling materials shall be added up to four feet below the ground surface. However, sealing materials may be used to fill the entire well up to four feet below the ground surface. The casing pipe shall be removed down to at least four feet below the ground surface and shall be capped with at least one foot of sealing materials. Obstructions shall be removed from the top four feet of the ground surface and the top four feet shall be backfilled with soil and graded.

b. Class 2 wells shall be plugged by placing filling materials at the bottom of the well up to four feet below the static water level. At least four feet of sealing material shall be added on top of the filling material up to the original static water level. Filling materials shall be placed up to four feet below the ground surface and the well shall be capped with at least one foot of sealing material. However, sealing materials may be used to fill the entire well up to four feet below the ground surface. The upper four feet of the casing pipe below the ground surface shall be removed. The top four feet of the ground surface shall be removed of obstructions and backfilled with soil and graded.

c. Class 3 wells shall be plugged by pulling the casing and sandpoint out of the ground, and collapsing the hole. The well may also be plugged by placing sealing materials up to four feet below the ground surface and by removing the upper four feet of casing pipe below the ground surface. The top four feet of the ground surface shall be removed of obstructions and backfilled with soil and graded.

4. The department shall sponsor an advertising campaign directed to persons throughout the state by print and electronic media designed to notify owners of the deadline for plugging wells, penalties for noncompliance, and information about receiving assistance in plugging wells.

5. An owner may, independent of a contractor, plug a well pursuant to this section subject to review and confirmation by a designated agent of the county or a well driller registered with the department.

6. A person who fails to properly plug a well on property the person owns, in accordance with the program established by the department, or as reported by a designated agent or a registered well driller, is subject to a civil penalty of up to one hundred dollars per every five calendar days that the well remains unplugged or improperly plugged. However, the total civil penalty shall not exceed one thousand dollars. The penalty shall only be assessed after the one thousand dollar limit is reached. If the owner plugs the well in compliance with this section, including applicable departmental rules, before the date that the one thousand dollar limit is reached, the civil penalty shall not be assessed. The penalty shall not be imposed upon a person for improperly plugging a well until the department notifies the person of the improper plugging. 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.

89 Acts, ch 286, §1 SF 441  
Section amended

#### **455B.291 Definitions.**

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

1. "Authority" means the Iowa finance authority established in section 220.2.
2. "Cost" means all costs, charges, expenses, or other indebtedness incurred by a municipality and determined by the director as reasonable and necessary for carrying out all works and undertakings necessary or incidental to the accomplishment of any project.
3. "Municipality" means the city, county, sanitary district, or other governmental body or corporation empowered to provide sewage collection and treatment services, or any combination of two or more of such governmental bodies or corporations acting jointly, in connection with a project.
4. "Project" means the acquisition, construction, reconstruction, extension, equipping, improvement, or rehabilitation of any works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner including treatment works as defined in section 212 of the Clean Water Act, or the implementation and development of management programs established under sections 319 and 320 of the Clean Water Act.
5. "Clean Water Act" means the federal Water Pollution Control Act of 1972, Pub. L. No. 92-500, as amended by the Water Quality Act of 1987, Pub. L. No. 100-4, as published in 33 U.S.C. §1251-1376.
6. "Sewage treatment works revolving loan fund" or "revolving loan fund" means the sewage treatment works revolving loan fund established in section 455B.295.
7. "Sewage treatment works administration fund" or "administration fund" means the sewage treatment works administration fund established in section 455B.295.
8. "Program" means the Iowa sewage treatment works financing program created pursuant to section 455B.294.

89 Acts, ch 83, §54 SF 112  
Subsection 9 stricken

#### **455B.302 Duty of cities and counties.**

Every city and county of this state shall provide for the establishment and operation of a comprehensive solid waste reduction program consistent with the waste management hierarchy under section 455B.301A, and a sanitary disposal project for final disposal of solid waste by its residents. Comprehensive programs and sanitary disposal projects may be established either separately or through co-operative efforts for the joint use of the participating public agencies as provided by law.

Cities and counties may execute with public and private agencies contracts, leases, or other necessary instruments, purchase land and do all things necessary not prohibited by law for the implementation of waste management programs, collection of solid waste, establishment and operation of sanitary disposal projects, and general administration of the same. Any agreement executed with a private agency for the operation of a sanitary disposal project shall provide for the posting of a sufficient surety bond by the private agency conditioned upon the faithful performance of the agreement. A city or county may at any time during regular working hours enter upon the premises of a sanitary disposal project,

including the premises of a sanitary landfill, in order to inspect the premises and monitor the operations and general administration of the project to ensure compliance with the agreement and with state and federal laws. This includes the right of the city or county to enter upon the premises of a former sanitary disposal project which has been closed, including the premises of a former sanitary landfill, owned by a private agency, for the purpose of providing required postclosure care.

89 Acts, ch 272, §28 HF 753  
Section amended

#### **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.

The commission shall adopt rules for the certification of operators of solid waste incinerators. The criteria for certification shall include, but is not limited to, an operator's technical competency and operation and maintenance of solid waste incinerators.

89 Acts, ch 272, §29 HF 753  
NEW unnumbered paragraph 12 (at end of section)

#### **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 disposal project unless the permit applicant, in conjunction with all local governments using the sanitary disposal project, has filed a plan as required by section 455B.306. For those sections for which the department has not developed rules, the permit shall contain conditions and a schedule for meeting all applicable requirements of 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 disposal project, unless the permit applicant, in conjunction with all local governments using the

sanitary disposal project, has filed a plan as required by section 455B.306. For those sections for which the department has not developed rules, the permit shall contain conditions and a schedule for meeting all applicable requirements of 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 disposal project, unless and until the permit applicant, in conjunction with all local governments using the sanitary disposal project, documents that steps are being taken to begin implementing the plan filed pursuant to section 455B.306. For those sections for which the department has not developed rules, the permit shall contain conditions and a schedule for meeting all applicable requirements of section 455B.306. However, a permit may be issued for the construction and operation of a new sanitary disposal project 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, in conjunction with all local governments using the landfill, 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, in conjunction with all local governments which will use the landfill, 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.

89 Acts, ch 272, §30 HF 753  
Subsections 2-5 amended

#### **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. All cities and counties shall also file with the director a comprehensive plan detailing the method by which the city or county will comply with the requirements of section 455B.302 to establish and implement a comprehensive solid waste reduction program for its residents. For the purposes of this section, a public agency managing the waste stream for cities or counties pursuant to chapter 28E, shall file one comprehensive plan on behalf of its members, which constitutes full compliance by the public agency's members with the filing requirements of this section. 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 governmen-

tal 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 for sanitary disposal projects shall be filed with the department at the time of initial application for the construction and operation of a sanitary disposal project and at a minimum shall be updated and refiled with the department at the time of each subsequent application for renewal or reissuance of a previously issued permit. The department may, consistent with rules of the commission, require filing or updating of a plan at other times.

3. A comprehensive plan filed pursuant to this section 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:

- 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 currently used.
- 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. The comprehensive plan shall provide details of a local recycling program which shall contain a methodology for meeting the state volume reduction goal pursuant to section 455D.3, and a methodology for implementing a program of separation of wastes including but not limited to glass, plastic, paper, and metal.

5. In addition to the above requirements, the following specific areas must be addressed in detail in a comprehensive plan filed in conjunction with the issuance, renewal, or reissuance of a permit for a sanitary disposal project:

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.

6. When a proposed plan is subject to review and approval by several state and local agencies, if the plan is substantially modified after approval by an agency, the plan shall be resubmitted as a new proposal to all other agencies to ensure that all agencies have approved the same plan.

7. 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 5, 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.

89 Acts, ch 272, §31, 32 HF 753

See Code editor's note

Section amended

#### **455B.307 Dumping—where prohibited—penalty.**

1. A private agency or public agency shall not dump or deposit or permit the dumping or depositing of any solid waste 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 protection 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, not to exceed five thousand dollars for each day of such violation.

89 Acts, ch 281, §1 SF 488  
Subsection 3 amended

#### **455B.314 Incineration at sanitary disposal projects.**

Beginning January 1, 1990, a sanitary disposal project that includes incineration as a part of its disposal process shall separate from the materials to be incinerated recyclable and reusable materials, materials which will result in uncontrolled toxic or hazardous air emissions when burned, and hazardous or toxic materials which are not rendered nonhazardous or nontoxic by incineration. The removed materials shall be recycled, reused, or treated and disposed in a manner approved by the department. Separation of waste includes magnetic separation.

89 Acts, ch 272, §33 HF 753  
NEW section

#### **455B.315 through 455B.330 Reserved.**

#### **455B.471 Definitions.**

As used in this part unless the context otherwise requires:

1. "*Nonoperational storage tank*" means an underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after July 1, 1985.

2. "*Operator*" means a person in control of, or having responsibility for, the daily operation of the underground storage tank.

3. "*Owner*" means:

a. In the case of an underground storage tank in use on or after July 1, 1985, a person who owns the underground storage tank used for the storage, use, or dispensing of regulated substances.

b. In the case of an underground storage tank in use before July 1, 1985, but no longer in use on that date, a person who owned the tank immediately before the discontinuation of its use.

"*Owner*" does not include a person who, without participating in the management or operation of the underground storage tank or the tank site, holds indicia of ownership primarily to protect that person's security interest in the underground storage tank or the tank site property, prior to obtaining ownership or control through debt enforcement, debt settlement, or otherwise.

4. "*Regulated substance*" means an element, compound, mixture, solution or substance which, when released into the environment, may present substantial danger to the public health or welfare or the environment. Regulated substance includes substances designated in 40 C.F.R., Parts 61 and 116, and section 401.15, and petroleum including crude oil or any fraction of crude oil which is liquid at

standard conditions of temperature and pressure (sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute). However, regulated substance does not include a substance regulated as a hazardous waste under the Resource Conservation and Recovery Act of 1976. Substances may be added or deleted as regulated substances by rule of the commission pursuant to section 455B.474.

5. *"Release"* means spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance, including petroleum, from an underground storage tank into groundwater, surface water, or subsurface soils.

6. *"Underground storage tank"* means one or a combination of tanks, including underground pipes connected to the tanks which are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes, is ten percent or more beneath the surface of the ground. Underground storage tank does not include:

a. Farm or residential tanks of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.

b. Tanks used for storing heating oil for consumptive use on the premises where stored.

c. Residential septic tanks.

d. Pipeline facilities regulated under the Natural Gas Pipeline Safety Act of 1968, as amended to January 1, 1985 (49 U.S.C. §1671 et seq.), the Hazardous Liquid Pipeline Safety Act of 1979, as amended to January 1, 1985 (49 U.S.C. §2001 et seq.), or an intrastate pipeline facility regulated under chapter 479.

e. A surface impoundment, pit, pond, or lagoon.

f. A storm water or wastewater collection system.

g. A flow-through process tank.

h. A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

i. A storage tank situated in an underground area including, but not limited to, a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

Underground storage tank does not include pipes connected to a tank described in paragraphs "a" to "i".

7. *"Tank site"* means a tank or grouping of tanks within close proximity of each other located on the facility for the purpose of storing regulated substances.

8. *"Board"* means the Iowa comprehensive petroleum underground storage tank fund board.

9. *"Corrective action"* means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for the purpose of repairing a leak or removal of a tank, removal of contaminated soil, disposal or processing of contaminated soil, and cleansing of groundwaters or surface waters. Corrective action does not include replacement of an underground storage tank. Corrective action specifically excludes third-party liability.

10. *"Fund"* means the Iowa comprehensive petroleum underground storage tank fund.

11. *"Petroleum"* means petroleum, including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute).

**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. The corrective action rules shall enable the director to order an owner or operator to immediately take all corrective actions deemed reasonable and necessary by the director.

e. The closure of tanks to prevent any future release of a regulated substance into the environment. If consistent with federal environmental protection agency technical standard regulations, state tank closure rules shall include, at the tank owner's election, an option to fill the tank with an inert material. Removal of a tank shall not be required if the tank is filled with an inert material pursuant to department of natural resources rules. A tank closed, or to be closed and which is actually closed, within one year of May 13, 1988, shall be required to complete monitoring or testing as required by the department to ensure that the tank did not leak prior to closure, but shall not be required to have a monitoring system installed.

f. Assessment plans for taking required release corrective action. The department shall mail a copy of the approved release assessment plan to the owner or operator of an underground storage tank; the copy mailed to the owner or operator shall be in addition to any copies provided to a contractor or agent of the owner or operator.

g. Specifying an adequate monitoring system to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources for regulated tanks installed prior to January 14, 1987. The effective date of the rules adopted shall be January 14, 1989. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Unless the federal environmental protection agency adopts final rules to the contrary, rules adopted pursuant to this section shall not apply to hydraulic lift reservoirs, such as for automobile hoists and elevators, containing hydraulic oil.

In adopting the rules under this subsection, the commission may distinguish between types, classes, and ages of underground storage tanks. In making the distinctions, the commission may take into consideration factors including, but not limited to, location of the tanks, compatibility of a tank material with the soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the degree of risk presented by the regulated substance, the technical and managerial capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the underground storage tank is fabricated.

The department may issue a variance, which includes an enforceable compliance schedule, from the mandatory monitoring requirement for an owner or operator who demonstrates plans for tank removal, replacement, or filling with an inert material pursuant to a department approved variance. A variance may be renewed for just cause.

2. The maintenance of evidence of financial responsibility as the director determines to be feasible and necessary for taking corrective action and for compensating third parties for bodily injury and property damage caused by release of a regulated substance from an underground storage tank.

a. Financial responsibility required by this subsection may be established in accordance with rules adopted by the commission by any one, or any combination, of the following methods: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In adopting requirements under this subsection, the commission may specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing the evidence of financial responsibility.

A person who establishes financial responsibility by self-insurance shall not require or shall not enforce an indemnification agreement with an operator or owner of the tank covered by the self-insurance obligation, unless the owner or operator has committed a substantial breach of a contract between the self-insurer and the owner or operator, and that substantial breach relates directly to the operation of the tank in an environmentally sound manner. This paragraph applies to all contracts between a self-insurer and an owner or operator entered into on or after May 5, 1989.

b. If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal bankruptcy law or if jurisdiction in any state court or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this paragraph, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

c. The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this subsection. This subsection does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.

d. For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

e. If an owner or operator is required to uncover or remove an underground storage tank based upon a determination of the department that the underground storage tank presents a hazard to the public health, safety, or the environment, and if upon inspection of the tank the determination is unfounded, the state may reimburse reasonable costs incurred in the inspection of the tank. Claims for reimbursement shall be filed on forms provided by the commission. The commission shall adopt rules pursuant to chapter 17A relating to determinations of reasonableness in approval or rejection of claims in cases of dispute. Claims shall

be paid from the general fund of the state. When any one of the tanks or the related pumps and piping at a multiple tank facility are found to be leaking, the state shall not reimburse costs for uncovering or removing any of the other tanks, piping, or pumps that are not found to be leaking.

3. Standards of performance for new underground storage tanks which shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards. Until the effective date of the standards adopted by the commission and after January 1, 1986, a person shall not install an underground storage tank for the purpose of storing regulated substances unless the tank (whether of single or double wall construction) meets all the following conditions:

a. The tank will prevent release due to corrosion or structural failure for the operational life of the tank.

b. The tank is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance.

c. The material used in the construction or lining of the tank is compatible with the substance to be stored. If soil tests conducted in accordance with A.S.T.M., standard G 57-78 or another standard approved by the commission show that soil resistivity in an installation location is twelve thousand ohm/cm or more (unless a more stringent soil resistivity standard is adopted by rule of the commission), a storage tank without corrosion protection may be installed in that location until the effective date of the standards adopted by the commission and after January 1, 1986.

d. Rules adopted by the commission shall specify adequate monitoring systems to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources from regulated tanks installed after January 14, 1987. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Tanks installed on or after January 14, 1987, shall continue to be considered new tanks for purposes of this chapter and are subject to state monitoring requirements unless federal requirements are more restrictive.

4. The form and content of the written notices required by section 455B.473.

5. The duties of owners or operators of underground storage tanks to locate and abate the source of release of regulated substances, when in the judgment of the director, the local hydrology, geology and other relevant factors reasonably include a tank as a potential source.

6. Reporting requirements necessary to enable the department to maintain an accurate inventory of underground storage tanks.

7. Designation of regulated substances subject to this part, consistent with section 455B.471, subsection 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.

89 Acts, ch 131, §36, 37 HF 447

Subsection 1, NEW paragraph f and subsequent paragraph lettered g

Subsection 2, paragraph a, NEW unnumbered paragraph 2

#### **455B.477 Penalties—burden of proof.**

1. A person who violates a provision of this part or a rule or order issued under this part is subject to a civil penalty not to exceed five thousand dollars for each day during which the violation continues. The civil penalty is an alternative to a criminal penalty provided under this part.

2. A person who knowingly fails to notify or makes a false statement, representation, or certification in a record, report, plan or other document filed or required to be maintained under this part or who falsifies, tampers with or knowingly renders inaccurate a monitoring device or method required to be maintained under this part or by a rule or order issued under this part, is guilty of an aggravated misdemeanor.

3. The attorney general, at the request of the director with approval of the commission, shall institute any legal proceedings, including an action for an injunction, necessary to enforce the penalty provisions of this part or to obtain compliance with the provisions of this part or rules adopted or order issued under this part. In any action, previous findings of fact of the director or the commission after notice and hearing are conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

4. In all proceedings with respect to an alleged violation of a provision of this part or a rule adopted or order issued by the commission, the burden of proof is upon the commission or the department.

5. If the attorney general has instituted legal proceedings in accordance with this section, all related issues which could otherwise be raised by the alleged violator in a proceeding for judicial review under section 455B.478 shall be raised in the legal proceedings instituted in accordance with this section.

6. The penalty for intentional failure of an owner or operator to register a petroleum underground storage tank under section 455B.473 shall be a minimum of seven thousand five hundred dollars up to a maximum of ten thousand dollars after October 1, 1989.

7. The civil penalties or other damages or moneys recovered by the state or the petroleum underground storage tank fund in connection with a petroleum underground storage tank under this part of this division or chapter 455G shall be credited to the fund created in section 455G.3 and allocated between fund accounts according to the fund budget. Any federal moneys, including but not limited to federal underground storage tank trust fund moneys, received by the state or the department of natural resources in connection with a release occurring on or after May 5, 1989, or received generally for underground storage tank programs on or after May 5, 1989, shall be credited to the fund created in section 455G.3 and allocated between fund accounts according to the fund budget, unless such use would be contrary to federal law. The department shall cooperate with the board of the Iowa comprehensive petroleum underground storage tank fund to maximize the state's eligibility for and receipt of federal funds for underground storage tank related purposes.

89 Acts, ch 131, §39 HF 447

NEW subsection 7

#### **455B.479 Storage tank management fee.**

An owner or operator of an underground storage tank shall pay an annual storage tank management fee of sixty-five dollars per tank of over one thousand one hundred gallons capacity. Twenty-three percent of the fees collected shall be

deposited in the storage tank management account of the groundwater protection fund. Seventy-seven percent of the fees collected shall be deposited in the Iowa comprehensive petroleum underground storage tank fund created in chapter 455G.

89 Acts, ch 131, §38 HF 447  
Section amended

#### **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.

In order to meet capacity assurance requirements of section 104k of the federal Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, and further the objectives of waste minimization, the department, in cooperation with the small business assistance center at the university of northern Iowa, shall work with generators of hazardous wastes in the state to develop and implement aggressive waste minimization programs. The goal of these programs is to reduce the volume of hazardous waste generated in the state as a whole by twenty-five percent of the amount generated as of January 1, 1987, as reported in the biennial reports collected by the United States environmental protection agency. The twenty-five percent reduction goal shall be reached as expeditiously as possible and no later than July 1, 1994. In meeting the reduction goal, elements "a" through "f" of the hazardous waste management hierarchy shall be utilized. The department, in cooperation with the small business assistance center, shall reassess the twenty-five percent reduction goal in 1994. The department shall promote research and development, provide and promote educational and informational programs, promote and encourage voluntary technical assistance to hazardous waste generators, promote assistance by the small business assistance center, and promote other activities by the public and private sectors that support this goal. In the promotion of the goal, the following hazardous waste management hierarchy, in descending order of preference, is established by the department:

- a. Source reduction for waste elimination.
- b. On-site recycling.
- c. Off-site recycling.
- d. Waste treatment.
- e. Incineration.
- f. Land disposal.

Additionally, the department shall establish and distribute to generators a listing of hazardous waste materials which are currently being recycled. The

department shall require that each hazardous waste generator in the state submit, with the biennial report submitted to the United States environmental protection agency, a report of hazardous waste materials currently designated as recyclable by the department which are not being recycled by the generator. The report shall include the reason why the generator is not recycling such products. A small generator which does not submit a biennial report to the United States environmental protection agency, shall provide the information required to be submitted under this paragraph on a form provided by the department, with the submittal of the small generator's hazardous waste permit fee.

The department shall consult with representatives of industries which generate hazardous waste and shall make recommendations to the general assembly by January 1, 1991, concerning the possible application of a front-end fee for substances which will result in the generation of hazardous waste, the role of state government in assisting the private sector in establishing permanent, on-site, internal audit functions, and other measures which state government may initiate to encourage and assist generators of hazardous waste in reducing the hazardous waste generated.

89 Acts, ch 242, §2 SF 470  
NEW unnumbered paragraphs 3-5

#### **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 authority 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. The report shall also include specific recommendations for attaining the goals for waste minimization and capacity assurance requirements.

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.

14. Develop and implement programs, in cooperation with the small business assistance center at the university of northern Iowa, which result in widespread adoption of waste minimization programs by hazardous waste generators. The department shall conduct educational and informational programs. The small business assistance center shall provide direct waste minimization technical assistance to small quantity hazardous waste generators. These programs may include, but are not limited to, source reduction, recycling, fuel recovery, incineration, compaction, and other alternatives to land disposal. The preference for program development and implementation shall be for programs which result in

the generation of less waste, followed by a preference for programs which reuse the waste generated in a beneficial manner.

89 Acts, ch 242, §3, 4 SF 470  
 Subsection 9 amended  
 NEW subsection 14

**455B.489 Waste management authority fund.** Repealed by 89 Acts, ch 272, §41. See §455D.15. HF 753

**455B.490 Used storage tank disposal.**

The waste management authority shall designate at least two facilities, but as many qualified facilities as apply or contract with the authority and the board, within the state for the acceptance of used underground storage tanks for final disposal. A designated facility shall accept any underground storage tank originally sited within the state, provided that the facility may require as a condition of acceptance, reasonable preparation, procedures, and information regarding the tank to facilitate safe processing and disposal. A sanitary landfill, other than a designated facility which is a sanitary landfill, shall not accept underground storage tanks for disposal after the date on which at least two facilities have been designated by the waste management authority pursuant to this section. A commercial scrap metal dealer or recycler may accept a tank for processing. The Iowa comprehensive petroleum underground storage tank fund may compensate a designated facility for all or a portion of the costs associated with processing or disposal of a tank delivered to the facility for final disposal pursuant to this section, if the department of natural resources determines that alternative satisfactory disposal options for used storage tanks do not then exist. A commercial scrap metal dealer or recycler may be a designated facility. A designated facility shall not charge a fee to an owner or operator of the underground storage tank as a condition of acceptance. The waste management authority shall adopt rules as necessary to govern the processing and disposal of underground storage tanks by a designated facility.

89 Acts, ch 131, §40 HF 447  
 NEW section

**455B.492 through 455B.500 Reserved.**

DIVISION VI

INFECTIOUS WASTE

**455B.501 Regulation of infectious waste.**

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

a. "*Infectious*" means containing pathogens with sufficient virulence and quantity so that exposure to an infectious agent by a susceptible host could result in an infectious disease when the infectious agent is improperly treated, stored, transplanted, or disposed.

b. "*Infectious waste*" means waste, which is infectious, including but not limited to contaminated sharps, cultures, and stocks of infectious agents, blood and blood products, pathological waste, and contaminated animal carcasses from hospitals or research laboratories.

c. "*Contaminated sharps*" means all discarded sharp items derived from patient care in medical, research, or industrial facilities including glass vials containing materials defined as infectious, hypodermic needles, scalpel blades, and pasteur pipettes.

d. "*Cultures and stocks of infectious agents*" means specimen cultures collected from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of

biological agents, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, or mix cultures.

e. "*Human blood and blood products*" means human serum, plasma, other blood components, bulk blood, or containerized blood in quantities greater than twenty milliliters.

f. "*Pathological waste*" means human tissues and body parts that are removed during surgery or autopsy.

g. "*Contaminated animal carcasses*" means waste including carcasses, body parts, and bedding of animals that were exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals.

2. The department shall institute an infectious waste management program in cooperation with the Iowa department of public health. The program shall include all of the following elements:

a. Recommendations to the commission for revision of the rules which refer to infectious waste as hazardous or toxic waste.

b. Initiation, in cooperation with associations of health care providers of an information and education effort regarding the current requirements for special waste authorizations prior to the disposal of infectious wastes in a landfill. The effort shall include an attempt to compile an inventory of the number of generators and the volumes generated. The inventory shall be completed and a report regarding the results of the inventory submitted to the general assembly by no later than January 15, 1991.

c. Upon completion of the compilation of the inventory, the department shall recommend, for adoption by the commission, standards for on-site and off-site treatment of infectious waste. In developing standards, the department shall consider factors affecting the feasibility of alternative methods of treatment and disposal, including but not limited to the volume of infectious waste generated, the availability of treatment facilities within geographic areas, and the costs of transporting infectious wastes to treatment facilities. The standards shall include monitoring requirements for treatment facilities, and training requirements for operators of facilities. The standards may include requirements for management plans dealing with the plans for management of infectious wastes in compliance with adopted standards. In cases in which an individual generator of infectious waste is served by a person treating or disposing of the infectious waste, the person treating or disposing of the waste may prepare the plan for all generators served.

d. The department shall undertake a public information program, in conjunction with the Iowa department of public health and health care providers, to promote public understanding of the scope and features of state and private efforts to manage infectious wastes.

89 Acts, ch 245, §1 HF 722  
NEW section

## 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.

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.

11. "Redemption center" means a facility at which consumers may return empty beverage containers and receive payment for the refund value of the empty beverage containers.

12. "Dealer agent" means a person who solicits or picks up empty beverage containers from a dealer for the purpose of returning the empty beverage containers to a distributor or manufacturer.

13. "Geographic territory" means the geographical area within a perimeter formed by the outermost boundaries served by a distributor.

89 Acts, ch 272, §34 HF 753

1989 amendment to subsection 5 takes effect July 1, 1990; 89 Acts, ch 272, §42 HF 753

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", and "C" 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 or a dealer agent shall be reimbursed by the distributor required to accept the empty beverage containers an amount which is one cent per container. A dealer, dealer agent, or person operating a redemption center may compact empty metal beverage containers with the approval of the distributor required to accept the containers.

89 Acts, ch 272, §35 HF 753

1989 amendment to subsection 1 takes effect July 1, 1990; 89 Acts, ch 272, §42 HF 753

Subsection 1 amended

#### 455C.3 Payment of refund value.

Except as provided in section 455C.4:

1. A dealer shall not refuse to accept from a consumer any empty beverage container of the kind, size and brand sold by the dealer, or refuse to pay to the consumer the refund value of a beverage container as provided under section 455C.2.

2. A distributor shall accept and pick up from a dealer served by the distributor or a redemption center for a dealer served by the distributor at least weekly, or

when the distributor delivers the beverage product if deliveries are less frequent than weekly, any empty beverage container of the kind, size and brand sold by the distributor, and shall pay to the dealer or person operating a redemption center the refund value of a beverage container and the reimbursement as provided under section 455C.2 within one week following pickup of the containers or when the dealer or redemption center normally pays the distributor for the deposit on beverage products purchased from the distributor if less frequent than weekly. A distributor or employee or agent of a distributor is not in violation of this subsection if a redemption center is closed when the distributor attempts to make a regular delivery or a regular pickup of empty beverage containers. This subsection does not apply to a distributor selling alcoholic liquor to the alcoholic beverages division of the department of commerce.

3. A distributor shall not be required to pay to a manufacturer a deposit or refund value on a nonrefillable beverage container.

4. A distributor shall accept from a dealer agent any empty beverage container of the kind, size, and brand sold by the distributor and which was picked up by the dealer agent from a dealer within the geographic territory served by the distributor and the distributor shall pay the dealer agent the refund value of the empty beverage container and the reimbursement as provided in section 455C.2.

5. The alcoholic beverages division of the department of commerce shall enter into an agreement with a private entity to meet the division's obligations under subsection 2. The agreement shall include the acceptance and picking up of the division's empty beverage containers and payment of the refund value and reimbursement of the agreement does not result in a net cost to the state. The agreement shall provide that the refund paid by the dealers to the division shall be assigned and transferred to the private entity. Any surplus refund values retained by the dealer shall be remitted to the waste volume reduction and recycling fund.

89 Acts, ch 272, §36 HF 753

Subsection 5 takes effect July 1, 1990; 89 Acts, ch 272, §42 HF 753

NEW subsection 5

#### **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 refuse to accept and to pay the refund value of an empty wine or alcoholic liquor container which is marked to indicate that it was sold by a state liquor store. The alcoholic beverages division shall not reimburse a dealer or a distributor the refund value on an empty wine or alcoholic liquor container which is marked to indicate that the container 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.

5. A manufacturer or distributor may refuse to accept and to pay the refund value and reimbursement as provided in section 455C.2 on any empty beverage

container that was picked up by a dealer agent from a dealer outside the geographic territory served by the manufacturer or distributor.

89 Acts, ch 161, §9 SF 118  
Subsection 3 amended

#### 455C.15 Plastic cans prohibited.

1. A person shall not manufacture, offer for sale, or sell any single-serving beverage container which is a plastic can nor offer for sale or sell any beverage packaged in a single-serving plastic can. For the purposes of this section, a "plastic can" means a beverage container which, in addition to the closure mechanism, is composed of plastic and metal.

2. A person violating this section is guilty of a serious misdemeanor.

89 Acts, ch 44, §1 SF 83  
NEW section

#### 455C.16 Beverage containers—disposal at sanitary landfill prohibited.

Beginning July 1, 1990, the final disposal of beverage containers by a dealer, distributor, or manufacturer, or person operating a redemption center, in a sanitary landfill, is prohibited.

89 Acts, ch 272, §37 HF 753  
NEW section

## CHAPTER 455D

### WASTE VOLUME REDUCTION AND RECYCLING

Recommendations to state agencies; conflicting rules; 89 Acts, ch 272, §43 HF 753

#### 455D.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. "Commission" means the environmental protection commission.
2. "Department" means the department of natural resources created pursuant to section 455A.2.
3. "Deposit" means the amount paid by the consumer to the retailer at the time of initial purchase that is intended to encourage the return of materials or containers and which is returned in full to the consumer when the used material or container is redeemed.
4. "Director" means the director of the department.
5. "Rebate" means the portion of the amount paid by the consumer to the retailer at the time of initial purchase that is returned to the consumer when the used material or container is returned for disposal.
6. "Recycling" means any process by which waste, or materials which would otherwise become waste, are collected, separated, or processed and revised or returned to use in the form of raw materials or products. "Recycling" includes but is not limited to the composting of yard waste which has been previously separated from other waste, but does not include any form of energy recovery.
7. "Waste abatement fee" means the amount paid by the consumer to the retailer at the time of initial purchase of a product that is intended to support the cost of proper disposal.
8. "Waste reduction" means practices which reduce, avoid, or eliminate both the generation of solid waste and the use of toxic materials so as to reduce risks to health and the environment and to avoid, reduce, or eliminate the generation of wastes or environmental pollution at the source and not merely achieved by shifting a waste output or waste stream from one environmental medium to another environmental medium.

89 Acts, ch 272, §1 HF 753  
NEW section

### 455D.2 Findings.

The general assembly finds that:

1. Iowa's environment is precious and no person has the right to pollute Iowa's air, water, or soil. The environment is vulnerable and irreplaceable, and all Iowans have an ongoing responsibility to conserve, preserve, and enhance the state's natural resources to guarantee their continued existence and use by the present and future generations.

2. The land itself is the source of Iowa's livelihood not only for the purposes of an agricultural economy, but for the establishment of manufacturing plants, business offices, and residences. While zoning establishes restrictions on the use of land for social order, a similar system has not been established to maintain environmental order below the ground. Protection of the environment includes not only visible but invisible threats as well.

3. The rapidly rising volume of waste deposited by society threatens the capacity of existing and future landfills. The nature of waste disposal today means that unknown quantities of potentially toxic and hazardous materials are being buried and pose a constant threat to the groundwater supply. In addition, the nature of the waste and disposal methods utilized allow the waste to remain basically inert for decades, if not centuries, without decomposition.

4. Wastes filling Iowa's landfills may, at best, represent a potential resource. However, without proper management, wastes are hazards to the environment and life itself.

5. The reduction of solid waste at the source and the recycling of reusable waste materials will reduce the flow of waste to sanitary landfills and increase the supply of reusable materials for the use of the public.

89 Acts, ch 272, §2 HF 753  
NEW section

### 455D.3 Goal.

The goal of the state is to reduce the amount of materials in the waste stream, existing as of July 1, 1988, twenty-five percent by July 1, 1994, and fifty percent by July 1, 2000, through the practice of waste volume reduction at the source and through recycling. For the purposes of this section, "*waste stream*" means the disposal of solid waste as "*solid waste*" is defined in section 455B.301. In determination of the reduction level of the waste stream, it shall be considered that each person currently generates three and one-half pounds of waste per day, and that this amount shall be reduced by the percentages indicated in order to preserve the health and safety of all Iowans.

89 Acts, ch 272, §3 HF 753  
NEW section

### 455D.4 Waste volume reduction policies.

1. It is the policy of this state to encourage the development of waste volume reduction programs and education at the local government level through incentives, technical assistance, grants, and other practical measures.

2. It is the policy of this state to support and encourage the development of new uses and markets for recycled goods, placing emphasis on the development, in Iowa, of businesses relating to waste reduction and recycling.

3. The provision of education concerning waste volume reduction at the elementary through high school levels and through community organizations will enhance the success of local programs requiring public involvement.

4. This state supports and encourages manufacturing methods which are environmentally sustainable, technologically safe, and ecologically sound. The state shall encourage manufacturing methods which enhance waste reduction by creating products with longer usage life, and by creating products which are

adaptable to secondary uses, require less input material, and decrease resource consumption.

5. The people of this state recognize that a variety of benefits result from a comprehensive waste reduction policy including the following environmental, economic, governmental, and public benefits:

a. Not producing waste in the first instance is the most certain means for avoiding the widely recognized health and environmental damage associated with waste. Although waste reduction will never eliminate all wastes, to the extent that waste reduction is achieved it results in the most certain form of direct risk reduction.

b. Waste reduction may result in reduced pollution control costs for industry by stimulating and promoting beneficial technological and management reorganization within industry in place of pollution control strategies which channel capital into nonproductive pollution control expenditures.

c. The government is better able to administer programs which offer a variety of benefits to industry and which reduce the overall cost of government involvement than it is to administer programs which offer few benefits to industry and require increasingly extensive, complex, and costly governmental actions.

d. Public confidence in environmental policies of the government is important for the effectiveness of these policies. Waste reduction poses no adverse environmental and public health effects and does not, therefore, lead to increased public concern. Waste reduction also increases the public confidence that the government and industry are doing all that is possible to protect human health and the environment.

89 Acts, ch 272, §4 HF 753  
NEW section

#### **455D.5 Statewide waste reduction and recycling network—established.**

1. The department shall establish a statewide waste reduction and recycling network to promote the waste management policy contained in section 455B.481 and the waste management hierarchy contained in section 455B.301A. Programs established shall encourage waste generators to reduce the volume of waste generated and to recycle or properly dispose of the waste that is generated. The network shall utilize existing recycling companies when possible. The programs may utilize financial and legal incentives, education, technical assistance, regulation, and other methods as appropriate to implement the programs. The programs may involve the development of public and private sector initiatives, the development of markets and other opportunities for waste reduction and recycling, and other related efforts.

2. The elements of the network shall include but are not limited to all of the following:

a. Promotion of efforts to increase the amount of recyclable materials used by the public.

b. Promotion of efforts to recover recyclable materials from the waste stream.

c. Promotion of local efforts to implement recycling collection centers located at disposal sites or other convenient local sites.

d. Promotion of local efforts of curbside collection of separated recyclable waste materials.

e. Provision of public education programs which promote public awareness of waste volume reduction and the use of recyclable materials.

f. Promotion of the creation of markets for recyclable materials.

g. Promotion of research, manufacturing processes, and product development, which provide for waste reduction through decreased material input, and resource consumption.

h. Promotion of the concentration of the efforts of the business and industry resource search service by the small business assistance center for the safe and

economic management of solid waste and hazardous substances at the university of northern Iowa, to locate existing waste streams and materials from businesses and industries which generate small amounts of waste and to catalyze the reuse of these materials in the production of goods and services.

3. The department, in cooperation with businesses involved in the manufacturing and use of polystyrene packaging products or food service items, shall establish and implement a recycling demonstration project utilizing these items by July 1, 1991. The department shall submit a report of the results of the project to the general assembly by January 1, 1992.

89 Acts, ch 272, §5 HF 753  
NEW section

#### **455D.6 Duties of the director.**

The director shall:

1. Unless otherwise specified in this chapter, recommend rules to the commission which are necessary to implement this chapter. Initial recommendations shall be made to the commission no later than July 1, 1991.

2. Seek, receive, and accept funds in the form of appropriations, grants, awards, wills, bequests, endowments, and gifts for deposit in the waste reduction and recycling trust fund to be used for programs relating to the duties of the department under this chapter.

3. Administer and coordinate the waste volume reduction and recycling fund created under section 455D.15.

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 the department's duties under this chapter.

5. Submit a report to the general assembly on or before July 1, 1990, that characterizes the solid waste stream in Iowa and that contains a strategy for managing each major component of the waste stream. The strategy shall describe the actions necessary to assure that each segment of the waste stream is managed according to the highest appropriate priority of the waste management hierarchy.

6. Develop a strategy and recommend to the commission the adoption of rules necessary to implement a strategy for white goods and waste oil by January 1, 1990.

7. Provide financial assistance through expenditure of the waste volume reduction and recycling fund to public and private entities to promote and enable the development and implementation of markets and industries in Iowa that will support and complement the state's waste reduction and recycling programs.

8. Study the technology available for the reclamation and recycling of refrigerant, including the findings of nationwide industry surveys, and make recommendations concerning whether or not all persons providing refrigerator or air conditioner repair services should own or have access to refrigerant reclamation or recycling machinery.

9. Identify products made from recycled or recovered materials and provide a list of these products to the department of general services and to all other state agencies to assist in the development and review of procurement specifications. The director shall also develop, in cooperation with the director of the department of general services, a program to promote the procurement of listed products and seek information from state agencies using products containing recycled or recovered materials to evaluate their performance. The program shall also provide that the director seek information from suppliers regarding product performance and recovered material content of products offered for sale. Based on the above evaluation, and information regarding the recyclability of the components of

products and their longevity, and, where applicable, the energy efficiency of such products, the department shall publish information on recommended products for procurement. This information shall be provided to all state agencies as well as city and county purchasing agencies.

89 Acts, ch 272, §6 HF 753  
NEW section

#### **455D.7 Duties of the commission.**

The commission shall:

1. Unless otherwise specified in this chapter, adopt rules necessary to implement this chapter pursuant to chapter 17A. Initial rules shall be adopted no later than April 1, 1992.
2. Prohibit land disposal of specific components of the waste stream for which the department has developed and implemented a strategy for alternative disposal according to the waste management hierarchy.
3. Establish by rule standards for the acceptance of recyclable or rebatable products at redemption centers. The standards may address matters of public health and handling by the redemption center.
4. Recommend to the general assembly, annually, the imposition of waste abatement fees, rebates, and deposits.

89 Acts, ch 272, §7 HF 753  
NEW section

#### **455D.8 Deposits, rebates, and waste abatement fees.**

The commission shall recommend to the general assembly, annually, deposits, rebates, and waste abatement fees on elements of the waste stream when necessary to encourage waste reduction, and the recycling and recovery of useful components of that waste stream element, or to encourage proper management and disposal of components that cannot be recycled or recovered. In making these recommendations, the commission shall not recommend the imposition of a deposit, rebate, or waste abatement fee on an element that is being properly managed through a market-driven or publicly supported recycling, recovery, or source separation program. The commission shall recommend to the general assembly that a deposit, rebate, or waste abatement fee is removed from an element of the waste stream when the commission determines that market forces will ensure that the element is recycled, recovered, or properly managed and disposed.

89 Acts, ch 272, §8 HF 753  
NEW section

#### **455D.9 Land disposal of yard waste—prohibited.**

1. Beginning January 1, 1991, land disposal of yard waste as defined by the department is prohibited. However, yard waste which has been separated at its source from other solid waste may be accepted by a sanitary landfill for the purposes of soil conditioning or composting.
2. The department shall assist local communities in the development of collection systems for yard waste generated from residences and shall assist in the establishment of local composting facilities. By July 1, 1990, each city and county shall, by ordinance, require persons within the city or county to separate yard waste from other solid waste generated. Municipalities which provide a collection system for solid waste shall provide for a collection system for yard waste which is not composted.
3. The department shall develop rules which define yard waste and provide for the safe and proper method of composting.
4. State and local agencies responsible for the maintenance of public lands in the state shall give preference to the use of composted materials in all land maintenance activities.

5. This section does not prohibit the use of yard waste as land cover or as soil conditioning material.

6. This section prohibits the incineration of yard waste at a sanitary disposal project.

89 Acts, ch 272, §9 HF 753  
NEW section

#### **455D.10 Land disposal of lead acid batteries—prohibited—collection for recycling.**

1. Beginning July 1, 1990, land disposal of lead acid batteries is prohibited.

2. A person offering for sale or selling lead acid batteries at retail in the state shall do all of the following:

a. Accept used lead acid batteries from customers who purchase new lead acid batteries, at the point of sale.

b. Post written notice that land disposal of lead acid batteries is prohibited and that state law requires the retailer to accept lead acid batteries for recycling when new lead acid batteries are purchased.

3. A person offering for sale or selling lead acid batteries at wholesale shall accept used lead acid batteries from retailers who purchase new lead acid batteries for resale to consumers, or from wholesale customers.

89 Acts, ch 272, §10 HF 753  
NEW section

#### **455D.11 Waste tires—land disposal prohibited.**

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

a. *"Permit"* means a permit issued by the department to establish, construct, modify, own, or operate a tire stockpiling facility.

b. *"Processing"* means producing or manufacturing usable materials from waste tires.

c. *"Processing site"* means a site which is used for the processing of waste tires and which is owned or operated by a tire processor who has a permit for the site.

d. *"Tire collector"* means a person who owns or operates a site used for the storage, collection, or deposit of more than fifty waste tires.

e. *"Tire processor"* means a person engaged in the processing of waste tires.

f. *"Waste tire"* means a tire that is no longer suitable for its originally intended purpose due to wear, damage, or defect.

g. *"Waste tire collection site"* means a site which is used for the storage, collection, or deposit of waste tires.

2. Land disposal of waste tires is prohibited beginning July 1, 1991, unless the tire has been processed in a manner established by the department. A sanitary landfill shall not refuse to accept a waste tire which has been properly processed.

3. The department shall conduct a study and make recommendations to the general assembly by January 1, 1991, concerning a waste tire abatement program which includes but is not limited to the following:

a. The number and geographic distribution of waste tires generated and existing in the state.

b. The development of markets for the recycling and processing of waste tires, in the midwestern states.

c. The methods to establish reliable sources of waste tires for users of waste tires.

d. The permitting of waste tire collection sites, waste tire processing facilities, and waste tire haulers.

e. The methods for the cleanup of existing stockpiles of waste tires.

4. Upon completion of the study pursuant to subsection 3, the department shall determine the number of stockpiling facilities which are necessary and shall

develop rules for stockpiling facilities which include but are not limited to the following:

- a. The prohibition of burning within one hundred yards of a tire stockpile.
  - b. The maximum height, width, and length of a tire stockpile.
  - c. Plans to control mosquitos and rodents.
  - d. A facility closure plan.
  - e. Specifications for fire lanes between stockpiles.
  - f. Limitations of the total number of tires allowed at a single stockpile site.
5. The department shall develop criteria for the issuance of permits and shall issue permits to qualified stockpiling facilities.
6. The department shall provide financial assistance to persons who establish recycling and processing sites for waste tires, subject to the rules established by the department for the establishment of such sites and subject to the conditions prescribed by the department for application for and awarding of such financial assistance.

89 Acts, ch 272, §11 HF 753  
Item vetoes applied to subsections 2 and 10 as enacted  
NEW section

#### 455D.12 Plastic container labeling.

1. In this section unless the context otherwise requires:
  - a. "Label" means a molded imprint or raised symbol on or near the bottom of a plastic product.
  - b. "Plastic" means any material made of polymeric organic compounds and additives that can be shaped by flow.
  - c. "Plastic bottle" means a plastic container that has a neck that is smaller than the body of the container, accepts a screw-type, snap cap, or other closure, and has a capacity of sixteen fluid ounces or more, but less than five gallons.
  - d. "Rigid plastic container" means any formed or molded container, other than a bottle, intended for single use, composed predominantly of plastic resin, and having a relatively inflexible infinite shape or form with a capacity of eight ounces or more, but less than five gallons.
2. Beginning July 1, 1992, a person shall not distribute, sell, or offer for sale in this state a plastic bottle or rigid plastic container unless the product is labeled with a code indicating the plastic resin used to produce the bottle or container. Rigid plastic bottles or rigid plastic containers with labels and basecaps of a different material shall be coded by their basic material. The code shall consist of a number placed within a triangle of arrows and letters placed below the triangle of arrows. The triangle shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the three arrows curved at their midpoints, shall depict a clockwise path around the code number. The numbers and letters used shall be as follows:

- a. 1. -PETE (polyethylene terephthalate)
- b. 2. -HDPE (high density polyethylene)
- c. 3. -V (vinyl)
- d. 4. -LDPE (low density polyethylene)
- e. 5. -PP (polypropylene)
- f. 6. -PS (polystyrene)
- g. 7. -OTHER (includes multilayer)

3. The department shall maintain a list of the label codes provided in subsection 2 and shall provide a copy of that list to any person upon request.

4. A container manufacturer or distributor who violates this section is subject to a civil penalty of not more than five hundred dollars for each violation.

89 Acts, ch 272, §12 HF 753  
NEW section

#### **455D.13 Land disposal of waste oil prohibited—collection.**

1. A sanitary landfill shall not accept waste oil for final disposal beginning July 1, 1990.

2. A person offering for sale or selling oil at retail in the state shall do the following:

a. Accept at the point of sale, waste oil from customers, or post notice of locations where a customer may dispose of waste oil.

b. Post written notice that it is unlawful to dispose of waste oil in a sanitary landfill.

89 Acts, ch 272, §13 HF 753  
NEW section

#### **455D.14 Products manufactured with chlorofluorocarbons prohibited.**

Beginning January 1, 1990, a person shall not sell, offer for sale, purchase, or use plastic foam packaging products or food service items manufactured with chlorofluorocarbons. Beginning January 1, 1998, a person shall not sell, offer for sale, purchase, or use plastic foam products, not previously prohibited, which are manufactured with fully halogenated chlorofluorocarbons. A person violating this section is guilty of a serious misdemeanor.

89 Acts, ch 272, §14 HF 753  
NEW section

#### **455D.15 Waste volume reduction and recycling fund.**

1. A waste volume reduction and recycling fund is created within the state treasury. Moneys received by the department from fees, including 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. Notwithstanding section 8.33, 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.

2. The department shall award grants based upon the solid waste management hierarchy set forth in section 455B.301A, subsection 1. A grant shall not be awarded to a county, city, or central planning agency which has not complied with the requirements of a comprehensive solid waste management program and which has not complied with or demonstrated an intent to comply with the requirements of section 455B.306.

3. The fund shall be utilized for the following purposes:

a. The initial thirty-five thousand dollars collected for deposit in the fund shall be appropriated to the department for establishment of the pollution hotline program established pursuant to section 455B.116, and for the salary and support of not more than one full-time equivalent position.

b. To provide financial assistance to public and private entities to develop and implement waste reduction and minimization programs for Iowa industries.

c. To provide financial assistance to public and private entities and to develop and implement programs to create and enhance markets for recyclable and other waste products.

d. To develop and implement educational and technical assistance programs that support and encourage waste reduction and recycling efforts by Iowans.

e. To administer the provisions of chapter 455B, division IV, part 1.

f. The department may utilize up to ten percent of the fund to administer the provisions of this chapter.

*g.* To provide grants to local communities or private individuals for projects which establish recycling collection centers, establish local curbside collection of separated recyclable waste materials, promote public awareness regarding waste volume reduction and the use of recyclable materials, and create markets for recyclable materials. Grants shall not be awarded for incineration.

*h.* To provide technical assistance to local communities in establishing collection systems and composting facilities for yard waste.

*i.* To fund the study required pursuant to section 455D.11, subsection 3, and to provide loans and grants for waste tire recycling and reprocessing projects.

*j.* To carry out the functions of the department of natural resources concerning recycling.

*k.* To promote the recycling of chlorofluorocarbons used as refrigerant.

89 Acts, ch 272, §15 HF 753  
NEW section

#### **455D.16 Packaging products—recycling—prohibition of polystyrene products.**

The department, in cooperation with businesses involved in the manufacturing and use of packaging products or food service items, shall establish a recycling program to increase the recycling of packaging products or food service items by twenty-five percent by January 1, 1992, and by fifty percent by January 1, 1993. If the recycling goals are not reached, beginning January 1, 1994, a person shall not manufacture, offer for sale, sell, or use any polystyrene packaging products or food service items in this state.

89 Acts, ch 272, §16 HF 753  
NEW section

#### **455D.17 Plastic bag and package labeling.**

1. Effective July 1, 1992, a person shall not sell or offer for sale a disposable plastic bag or packaging material that does not comply with the labeling requirements of this section.

2. The commission shall adopt rules to establish the labeling requirements for disposable plastic bags and packaging materials. The labeling shall be designed to inform consumers and users of the products about the degradability of the bag or packaging material.

89 Acts, ch 272, §17 HF 753  
NEW section

#### **455D.18 Nondegradable grocery bags and trash bags.**

Effective July 1, 1992, a person shall not land dispose of nondegradable plastic grocery bags or trash bags in this state unless the department determines that degradable plastic bags pose an environmental hazard.

89 Acts, ch 272, §18 HF 753  
NEW section

## **CHAPTER 455E**

### **GROUNDWATER PROTECTION**

#### **455E.11 Groundwater protection fund established—appropriations.**

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. Notwithstanding section 453.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the groundwater protection fund or in any of the accounts within the groundwater protection fund shall be credited to the groundwater protection fund or the respective accounts within the groundwater protection 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 moneys received from the tonnage fee imposed under section 455B.310 for the fiscal year beginning July 1, 1987, and ending June 30, 1988, shall be used for the following purposes:

(a) An amount equal to fifty percent of the moneys received from the tonnage fee imposed pursuant to section 455B.310 shall be reserved for the purpose of providing grants to cities and counties required to provide for sanitary disposal projects under section 455B.302 for the purpose of developing or updating plans required to be filed under section 455B.306. Grants shall be governed by section 455B.311.

(b) An amount equal to twenty-five percent of the moneys received from the tonnage fee imposed under section 455B.310 shall be reserved for the purpose of providing grants to public water supply systems to abate or eliminate threats to public health and safety resulting from contamination of the water supply source. However, a public water supply shall not receive a grant for more than ten percent of the moneys available for those purposes.

(c) An amount equal to twenty-five percent of the moneys received from the tonnage fee imposed under section 455B.310 shall be appropriated to the waste management authority.

(2) 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 13.

(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.

(3) 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.

(4) 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.

(5) 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 13.

(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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) Fifty cents per ton per year of funds received from the tonnage fee imposed under section 455B.310 for the fiscal year beginning July 1, 1990, and thereafter 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.

(11) 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.

(12) 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.

(13) 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. An agriculture management account. Moneys collected from the groundwater protection fee levied pursuant to section 200.8, subsection 4, the portion of the fees collected pursuant to sections 206.8, subsection 2, and 206.12, subsection 3, and other moneys designated for the purpose of agriculture management shall be deposited in the agriculture management account. 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) Two hundred thousand dollars of the moneys deposited in the agriculture management account is appropriated to the department of agriculture and land stewardship for the fiscal year beginning July 1, 1987, and ending June 30, 1988, for the demonstration projects regarding agriculture drainage wells and sink-holes. Any remaining balance of the appropriation made for the purpose of funding such demonstration projects for the fiscal year beginning July 1, 1987, and ending June 30, 1988, shall not revert to the account, notwithstanding section 8.33, but shall remain available for the purpose of funding such demonstration projects during the fiscal period beginning July 1, 1988, and ending June 30, 1990.

(3) 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 seventeen and one-half 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 seventeen and one-half 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 location, 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 of the account 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. 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. Any remaining balance of the appropriation made for the purpose of funding of projects regarding alternative practices in the remediation of noxious weeds or other vegetation within highway rights-of-way for the fiscal year beginning July 1, 1987, and ending June 30, 1988, shall not revert to the account, notwithstanding section 8.33, but shall remain available for the purpose of funding the projects during the fiscal period beginning July 1, 1988, and ending June 30, 1990.

c. A household hazardous waste account. The moneys collected pursuant to section 455F.7 shall be deposited in the household hazardous waste account. Except for the first one hundred thousand dollars received annually for deposit in the waste volume reduction and recycling fund to be used by the department to provide financial assistance to counties in investigation of complaints; and the next one hundred thousand dollars received annually for deposit in the emergency response fund, the treasurer of state shall deposit moneys received from civil penalties and fines imposed by the court pursuant to sections 455B.146, 455B.191, 455B.386, 455B.417, 455B.454, 455B.466, and 455B.477, 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.

The department shall submit to the general assembly, annually on or before January 1, an itemized report which includes but is not limited to the total amount of moneys collected and the sources of the moneys collected, the amount of moneys expended for administration of the programs funded within the account, and an itemization of any other expenditures made within the previous fiscal year.

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, except those moneys deposited into the Iowa comprehensive petroleum underground storage tank fund pursuant to section 455B.479. 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) Twenty-three percent of the proceeds of the fees imposed pursuant to section 455B.473, subsection 5, and section 455B.479 shall be deposited in the account annually, up to a maximum of three hundred fifty thousand dollars. If twenty-

three percent of the proceeds exceeds three hundred fifty thousand dollars, the excess shall be deposited into the fund created in section 455G.3. Three hundred fifty thousand dollars is appropriated from the storage tank management account 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) The remaining funds in the account are appropriated annually to the Iowa comprehensive petroleum underground storage tank fund.

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 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.

89 Acts, ch 131, §41 HF 447; 89 Acts, ch 272, §38 HF 753; 89 Acts, ch 311, §28 HF 778

Subsection 2, paragraph b, subparagraph (3), subparagraph subdivision (b) amended; paragraphs c and d amended

## CHAPTER 455G

### IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND ACT

Legislative findings; legislative intent; conditions upon finding of invalidity; 89 Acts, ch 131, §1, 2, 59 HF 447

#### 455G.1 Title—scope.

1. This chapter is entitled the "*Iowa Comprehensive Petroleum Underground Storage Tank Fund Act*".

2. This chapter applies to a petroleum underground storage tank required to maintain proof of financial responsibility under federal law, from the effective date of the regulation of the federal environmental protection agency governing that tank, and not from the effective compliance date, unless the effective compliance date of the regulation is the effective date of the regulation. An owner or operator of a petroleum underground storage tank required by federal law to maintain proof of financial responsibility for that underground storage tank, or who will be required on a date definite, is subject to this chapter and chapter 424.

a. As of May 5, 1989, tanks excluded by the federal Resource Conservation and Recovery Act, subtitle I, included the following:

(1) A farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.

(2) A tank used for storing heating oil for consumptive use on the premises where stored.

(3) A septic tank.

(4) A pipeline facility, including gathering lines, regulated under any of the following:

(a) The federal Natural Gas Pipeline Safety Act of 1968.

(b) The federal Hazardous Liquid Petroleum Pipeline Safety Act of 1979.

(c) State laws comparable to the provisions of the law referred to in subparagraph subdivision (a) or (b).

(5) A surface impoundment, pit, pond, or lagoon.

(6) A storm water or wastewater collection system.

- (7) A flow-through process tank.
- (8) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.
- (9) A storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor to permit inspection of its entire surface.
  - b. As of May 5, 1989, tanks exempted or excluded by United States environmental protection agency financial responsibility regulations, 40 C.F.R. §280.90, included the following:
    - (1) Underground storage tank systems removed from operation, pursuant to applicable department of natural resources rules, prior to the applicable federal compliance date established in 40 C.F.R. §280.91.
    - (2) Those owned or operated by state and federal governmental entities whose debts and liabilities are the debts and liabilities of a state or the United States.
    - (3) Any underground storage tank system holding hazardous wastes listed or identifiable under subtitle C of the federal Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.
    - (4) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) or 402 of the federal Clean Water Act.
    - (5) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and reservoirs and electrical equipment tanks.
    - (6) Any underground storage tank system whose capacity is one hundred ten gallons or less.
    - (7) Any underground storage tank system that contains a de minimis concentration of regulated substances.
    - (8) Any emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.
    - (9) Any underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 C.F.R. pt. 50, appendix A.
    - (10) Airport hydrant fuel distribution systems.
    - (11) Underground storage tank systems with field-constructed tanks.

c. If and when federal law changes, the department of natural resources shall adopt by rule such additional requirements, exemptions, deferrals, or exclusions as required by federal law. It is expected that certain classes of tanks currently exempted or excluded by federal regulation will be regulated by the United States environmental protection agency in the future. A tank which is not required by federal law to maintain proof of financial responsibility shall not be subject to department of natural resources rules on proof of financial responsibility.

89 Acts, ch 131, §42 HF 447  
 Exemption certificates; §424.6  
 NEW section

#### 455G.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. "Authority" means the Iowa finance authority created in chapter 220.
2. "Board" means the Iowa comprehensive petroleum underground storage tank fund board.
3. "Bond" means a bond, note, or other obligation issued by the authority for the fund and the purposes of this chapter.
4. "Corrective action" means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for the purposes of repairing a leak or removal of a tank, removal of

contaminated soil, and cleansing of groundwaters or surface waters. Corrective action does not include replacement of an underground storage tank or other capital improvements to the tank. Corrective action specifically excludes third-party liability. Corrective action includes the expenses incurred to prepare an assessment plan for approval by the department of natural resources detailing the planned response to a release or suspected release, but not necessarily all actions proposed to be taken by an assessment plan.

5. "*Diminution*" is the amount of petroleum which is released into the environment prior to its intended beneficial use.

6. "*Diminution rate*" is the presumed rate at which petroleum experiences diminution, and is equal to one-tenth of one percent of all petroleum deposited into a tank.

7. "*Fund*" means the Iowa comprehensive petroleum underground storage tank fund.

8. "*Improvement*" means the acquisition, construction, or improvement of any tank, tank system, or monitoring system in order to comply with state and federal technical requirements or to obtain insurance to satisfy financial responsibility requirements.

9. "*Insurance*" includes any form of financial assistance or showing of financial responsibility sufficient to comply with the federal Resource Conservation and Recovery Act or the Iowa department of natural resources' underground storage tank financial responsibility rules.

10. "*Insurance premium*" includes any form of premium or payment for insurance or for obtaining other forms of financial assurance, or showing of financial responsibility.

11. "*Petroleum*" means petroleum, including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute).

12. "*Precorrective action value*" means the assessed value of the tank site immediately prior to the discovery of a petroleum release.

13. "*Small business*" means a business that meets all of the following requirements:

a. Is independently owned and operated.

b. Owns at least one, but no more than twelve tanks at no more than two different tank sites.

c. Has a net worth of two hundred thousand dollars or less.

14. "*Tank*" means an underground storage tank for which proof of financial responsibility is, or on a date definite will be, required to be maintained pursuant to the federal Resource Conservation and Recovery Act and the regulations from time to time adopted pursuant to that Act or successor Acts or amendments.

89 Acts, ch 131, §43 HF 447  
NEW section

### **455G.3 Establishment of Iowa comprehensive petroleum underground storage tank fund.**

1. The Iowa comprehensive petroleum underground storage tank fund is created as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Iowa comprehensive petroleum underground storage tank fund. Interest or other income earned by the fund shall be deposited in the fund. The fund shall include moneys credited to the fund under this section and sections 424.7, 455G.8, 455G.9, 455G.10, 455G.11, and 455G.13, and other funds which by law may be credited to the fund. The moneys in the fund are appropriated to and for the purposes of the board as provided in this chapter. Amounts in the fund shall not be subject to appropriation for any other purpose by the general

assembly, but shall be used only for the purposes set forth in this chapter. The treasurer of state shall act as custodian of the fund and disburse amounts contained in it as directed by the board including automatic disbursements of funds as received pursuant to the terms of bond indentures and documents and security provisions to trustees and custodians. The treasurer of state is authorized to invest the funds deposited in the fund at the direction of the board and subject to any limitations contained in any applicable bond proceedings. The income from such investment shall be credited to and deposited in the fund. The fund shall be administered by the board which shall make expenditures from the fund consistent with the purposes of the programs set out in this chapter without further appropriation. The fund may be divided into different accounts with different depositories as determined by the board and to fulfill the purposes of this chapter.

2. The board shall assist Iowa's owners and operators of petroleum underground storage tanks in complying with federal environmental protection agency technical and financial responsibility regulations by establishment of the Iowa comprehensive petroleum underground storage tank fund. The authority may issue its bonds, or series of bonds, to assist the board, as provided in this chapter.

3. The purposes of this chapter shall include but are not limited to any of the following:

a. To establish a remedial account to fund corrective action for petroleum releases as provided by section 455G.9.

b. To establish a loan guarantee account, as provided by and to the extent permitted by section 455G.10.

c. To establish an insurance account for insurable underground storage tank risks within the state as provided by section 455G.11.

4. The state, the general fund of the state, or any other fund of the state, other than the Iowa comprehensive petroleum underground storage tank fund, is not liable for a claim or cause of action in connection with a tank not owned or operated by the state, or agency of the state. All expenses incurred by the fund shall be payable solely from the fund and no liability or obligation shall be imposed upon the state. The liability of the fund is limited to the extent of coverage provided by the account under which a claim is submitted, subject to the terms and conditions of that coverage. The liability of the fund is further limited by the moneys made available to the fund, and no remedy shall be ordered which would require the fund to exceed its then current funding limitations to satisfy an award or which would restrict the availability of moneys for higher priority sites. The state is not liable for a claim presented against the fund.

89 Acts, ch 131, §44 HF 447  
NEW section

#### **455G.4 Governing board.**

1. *Members of the board.* The Iowa comprehensive petroleum underground storage tank board is established consisting of the following members:

a. The director of the department of natural resources, or the director's designee.

b. The treasurer of state, or the treasurer's designee.

c. The commissioner of insurance, or the commissioner's designee.

d. Two public members appointed by the governor and confirmed by the senate to staggered four-year terms, except that of the first members appointed, one public member shall be appointed for a term of two years and one for a term of four years. A public member shall have experience, knowledge, and expertise of the subject matter embraced within this chapter. Two public members shall be appointed with experience in either, or both, financial markets or insurance.

A public member shall not have a conflict of interest. For purposes of this section a "conflict of interest" means an affiliation, within the twelve months before the member's appointment, with the regulated tank community, or with a person or

property and casualty insurer offering competitive insurance or other means of financial assurance or which previously offered environmental hazard insurance for a member of the regulated tank community.

The filling of positions reserved for public representatives, vacancies, membership terms, payment of compensation and expenses, and removal of members are governed by chapter 69. Members of the board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties within the limits of funds appropriated to the board or made available to the fund. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. The members shall elect a voting chairperson of the board from among the members of the board.

2. *Department cooperation with board.* The director of the department of natural resources shall cooperate with the board in the implementation of this part so as to minimize unnecessary duplication of effort, reporting, or paperwork and maximize environmental protection.

3. *Rules and emergency rules.*

a. The board shall adopt rules regarding its practice and procedures, develop underwriting standards, establish premiums for insurance account coverage and risk factors, procedures for investigating and settling claims made against the fund, determine appropriate deductibles or retentions in coverages or benefits offered, and otherwise implement and administer this chapter.

b. The board may adopt administrative rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to implement this subsection for one year after May 5, 1989.

c. Rules necessary for the implementation and collection of the environmental protection charge shall be adopted on or before June 1, 1989.

d. Rules necessary for the implementation and collection of insurance account premiums shall be adopted prior to offering insurance to an owner or operator of a petroleum underground storage tank or other person.

e. Rules related to the establishment of the insurance account and the terms and conditions of coverage shall be adopted as soon as practicable to permit owners and operators to meet their applicable compliance date with federal financial responsibility regulations.

89 Acts, ch 131, §45 HF 447  
NEW section

**455G.5 Independent contractors to be retained by board.**

The board shall administer the fund. A contract to retain a person under this section may be individually negotiated, and is not subject to public bidding requirements.

The board may enter into a contract or an agreement authorized under chapter 28E with a private agency or person, the department of natural resources, the Iowa finance authority, the department of revenue and finance, other departments, agencies, or governmental subdivisions of this state, another state, or the United States, in connection with its administration and implementation of this chapter or chapter 424 or 455B.

The board may reimburse a contractor, public or private, retained pursuant to this section for expenses incurred in the execution of a contract or agreement. Reimbursable expenses include, by way of example, but not exclusion, the costs of collecting the environmental protection charge or administering specific delegated duties or powers of the board.

89 Acts, ch 131, §46 HF 447  
NEW section

### **455G.6 Iowa comprehensive petroleum underground storage tank fund—general and specific powers.**

In administering the fund, the board has all of the general powers reasonably necessary and convenient to carry out its purposes and duties and may do any of the following, subject to express limitations contained in this chapter:

1. Guarantee secured and unsecured loans, and enter into agreements for corrective action, acquisition and construction of tank improvements, and provide for the insurance program. The loan guarantees may be made to a person or entity owning or operating a tank. The board may take any action which is reasonable and lawful to protect its security and to avoid losses from its loan guarantees.

2. Acquire, hold, and mortgage personal property and real estate and interests in real estate to be used.

3. Purchase, construct, improve, furnish, equip, lease, option, sell, exchange, or otherwise dispose of one or more improvements under the terms it determines.

4. Grant a mortgage, lien, pledge, assignment, or other encumbrance on one or more improvements, revenues, asset of right, accounts, or funds established or received in connection with the fund, including environmental protection charges deposited in the fund or an account of the fund.

5. Provide that the interest on bonds may vary in accordance with a base or formula.

6. Contract for the acquisition, construction, or both of one or more improvements or parts of one or more improvements and for the leasing, subleasing, sale, or other disposition of one or more improvements in a manner it determines.

7. The board may contract with the authority for the authority to issue bonds and do all things necessary with respect to the purposes of the fund, as set out in the contract between the board and the authority. The board may delegate to the authority and the authority shall then have all of the powers of the board which are necessary to issue and secure bonds and carry out the purposes of the fund, to the extent provided in the contract between the board and the authority. The authority may issue the authority's bonds in principal amounts which, in the opinion of the board, are necessary to provide sufficient funds for the fund, the payment of interest on the bonds, the establishment of reserves to secure the bonds, the costs of issuance of the bonds, other expenditures of the authority incident to and necessary or convenient to carry out the bond issue for the fund, and all other expenditures of the board necessary or convenient to administer the fund. The bonds are investment securities and negotiable instruments within the meaning of and for purposes of the uniform commercial code.

8. Bonds issued under this section are payable solely and only out of the moneys, assets, or revenues of the fund, all of which may be deposited with trustees or depositories in accordance with bond or security documents and pledged by the board to the payment thereof, and are not an indebtedness of this state or the authority, or a charge against the general credit or general fund of the state or the authority, and the state shall not be liable for any financial undertakings with respect to the fund. Bonds issued under this chapter shall contain on their face a statement that the bonds do not constitute an indebtedness of the state or the authority.

9. The proceeds of bonds issued by the authority and not required for immediate disbursement may be deposited with a trustee or depository as provided in the bond documents and invested in any investment approved by the authority and specified in the trust indenture, resolution, or other instrument pursuant to which the bonds are issued without regard to any limitation otherwise provided by law.

10. The bonds shall be:

a. In a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, and be subject to such other terms and

conditions as prescribed in the trust indenture, resolution, or other instrument authorizing their issuance.

b. Negotiable instruments under the laws of the state and may be sold at prices, at public or private sale, and in a manner, as prescribed by the authority. Chapters 23, 74, 74A and 75 do not apply to their sale or issuance of the bonds.

c. Subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter and as determined by the trust indenture, resolution, or other instrument authorizing their issuance.

11. The bonds are securities in which public officers and bodies of this state; political subdivisions of this state; insurance companies and associations and other persons carrying on an insurance business; banks, trust companies, savings associations, savings and loan associations, and investment companies; administrators, guardians, executors, trustees, and other fiduciaries; and other persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

12. Bonds must be authorized by a trust indenture, resolution, or other instrument of the authority, approved by the board. However, a trust indenture, resolution, or other instrument authorizing the issuance of bonds may delegate to an officer of the issuer the power to negotiate and fix the details of an issue of bonds.

13. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created needs to be recorded or filed under the Iowa uniform commercial code to be valid, binding, or effective.

14. Bonds issued under the provisions of this section are declared to be issued for an essential public and governmental purpose and all bonds issued under this chapter shall be exempt from taxation by the state of Iowa and the interest on the bonds shall be exempt from the state income tax and the state inheritance and estate tax.

15. Subject to the terms of any bond documents, moneys in the fund or fund accounts may be expended for administration expenses, civil penalties, moneys paid under an agreement, stipulation, or settlement, and for the costs of any other activities as the board may determine are necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this chapter.

16. The board shall cooperate with the department of natural resources in the implementation and administration of this chapter to assure that in combination with existing state statutes and rules governing underground storage tanks, the state will be, and continue to be, recognized by the federal government as having an "approved state account" under the federal Resource Conservation and Recovery Act, especially by compliance with the Act's subtitle I financial responsibility requirements as enacted in the federal Superfund Amendments and Reauthorization Act of 1986 and the financial responsibility regulations adopted by the United States environmental protection agency at 40 C.F.R. pts. 280 and 281. Whenever possible this chapter shall be interpreted to further the purposes of, and to comply, and not to conflict, with such federal requirements.

89 Acts, ch 131, §47 HF 447

Section repealed effective July 1, 2009; exception for outstanding bonds; 89 Acts, ch 131, §63 HF 447

NEW section

#### **455G.7 Security for bonds—capital reserve fund—irrevocable contracts.**

1. For the purpose of securing one or more issues of bonds for the fund, the authority, with the approval of the board, may authorize the establishment of one or more special funds, called "capital reserve funds". The authority may pay into the capital reserve funds the proceeds of the sale of its bonds and other money

which may be made available to the authority from other sources for the purposes of the capital reserve funds. Except as provided in this section, money in a capital reserve fund shall be used only as required for any of the following:

- a. The payment of the principal of and interest on bonds or of the sinking fund payments with respect to those bonds.
- b. The purchase or redemption of the bonds.
- c. The payment of a redemption premium required to be paid when the bonds are redeemed before maturity.

However, money in a capital reserve fund shall not be withdrawn if the withdrawal would reduce the amount in the capital reserve fund to less than the capital reserve fund requirement, except for the purpose of making payment, when due, of principal, interest, redemption premiums on the bonds, and making sinking fund payments when other money pledged to the payment of the bonds is not available for the payments. Income or interest earned by, or increment to, a capital reserve fund from the investment of all or part of the capital reserve fund may be transferred by the authority to other accounts of the fund if the transfer does not reduce the amount of the capital reserve fund below the capital reserve fund requirement.

2. If the authority decides to issue bonds secured by a capital reserve fund, the bonds shall not be issued if the amount in the capital reserve fund is less than the capital reserve fund requirement, unless at the time of issuance of the bonds the authority deposits in the capital reserve fund from the proceeds of the bonds to be issued or from other sources, an amount which, together with the amount then in the capital reserve fund, is not less than the capital reserve fund requirement.

3. In computing the amount of a capital reserve fund for the purpose of this section, securities in which all or a portion of the capital reserve fund is invested shall be valued by a reasonable method established by the authority. Valuation shall include the amount of interest earned or accrued as of the date of valuation.

4. In this section, "*capital reserve fund requirement*" means the amount required to be on deposit in the capital reserve fund as of the date of computation.

5. To assure maintenance of the capital reserve funds, the authority shall, on or before July 1 of each calendar year, make and deliver to the governor the authority's certificate stating the sum, if any, required to restore each capital reserve fund to the capital reserve fund requirement for that fund. Within thirty days after the beginning of the session of the general assembly next following the delivery of the certificate, the governor may submit to both houses printed copies of a budget including the sum, if any, required to restore each capital reserve fund to the capital reserve fund requirement for that fund. Any sums appropriated by the general assembly and paid to the authority pursuant to this section shall be deposited in the applicable capital reserve fund.

6. All amounts paid by the state pursuant to this section shall be considered advances by the state and, subject to the rights of the holders of any bonds of the authority that have previously been issued or will be issued, shall be repaid to the state without interest from all available revenues of the fund in excess of amounts required for the payment of bonds of the authority, the capital reserve fund, and operating expenses.

7. If any amount deposited in a capital reserve fund is withdrawn for payment of principal, premium, or interest on the bonds or sinking fund payments with respect to bonds thus reducing the amount of that fund to less than the capital reserve fund requirement, the authority shall immediately notify the governor and the general assembly of this event and shall take steps to restore the capital reserve fund to the capital reserve fund requirement for that fund from any amounts designated as being available for such purpose.

### 455G.8 Revenue sources for fund.

Revenue for the fund shall include, but is not limited to, the following, which shall be deposited with the board or its designee as provided by any bond or security documents and credited to the fund:

1. *Bonds issued to capitalize fund.* The proceeds of bonds issued to capitalize and pay the costs of the fund, and investment earnings on the proceeds except as required for the capital reserve funds.

2. *Environmental protection charge.* The environmental protection charge imposed under chapter 424. The proceeds of the environmental protection charge shall be allocated, consistent with this chapter, among the fund's accounts, for debt service and other fund expenses, according to the fund budget, resolution, trust agreement, or other instrument prepared or entered into by the board or authority under direction of the board.

3. *Storage tank management fee.* That portion of the storage tank management fee proceeds which are deposited into the fund, pursuant to section 455B.479.

4. *Insurance premiums.* Insurance premium income as provided by section 455G.11 shall be credited to the insurance account.

5. *Cost recovery enforcement.* Cost recovery enforcement net proceeds as provided by section 455G.13 shall be allocated among the fund's accounts as directed by the board. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

6. *Other sources.* Interest attributable to investment of money in the fund or an account of the fund. Moneys in the form of a devise, gift, bequest, donation, federal or other grant, reimbursement, repayment, judgment, transfer, payment, or appropriation from any source intended to be used for the purposes of the fund.

89 Acts, ch 131, §49 HF 447  
NEW section

### 455G.9 Remedial program.

1. *Limits of remedial account coverage.* Moneys in the remedial account shall only be paid out for the following:

a. (1) Corrective action for an eligible release reported to the department of natural resources on or after July 1, 1987, but prior to May 5, 1989. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release under this subparagraph, the remedial program shall pay no more than the lesser of twenty-five thousand dollars or one-third of the total costs of corrective action for that release, subsection 4 notwithstanding. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage must be currently engaged in the business for which the tank connected with the release was used prior to the report of the release.

(b) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

(c) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after July 1, 1987.

(d) The claim for coverage pursuant to this subparagraph must have been filed with the board prior to January 31, 1990.

(e) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

Total payments for claims pursuant to this subparagraph are limited to no more than six million dollars. Claims for eligible releases shall be prorated if claims filed exceed six million dollars. If claims remain partially or totally unpaid after total payments equal six million dollars, all remaining claims are void, and no entitlement exists for further payment.

(2) Corrective action for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990. Third-party liability is specifically excluded from remedial account coverage. Corrective action coverage provided pursuant to this paragraph may be aggregated with other financial assurance mechanisms as permitted by federal law to satisfy required aggregate and per occurrence limits of financial responsibility for both corrective action and third-party liability, if the owner's or operator's effective financial responsibility compliance date is prior to October 26, 1990.

b. Corrective action and third-party liability for a release discovered on or after January 24, 1989, for which a responsible owner or operator able to pay cannot be found and for which the federal underground storage tank trust fund or other federal moneys do not provide coverage.

c. Corrective action and third-party liability for a tank owned or operated by a financial institution eligible to participate in the remedial account under section 455G.16 if the prior owner or operator is unable to pay, if so authorized by the board as part of a condition or incentive for financial institution participation in the fund pursuant to section 455G.16.

d. One hundred percent of the costs of corrective action and third party liability for a release situated on property acquired by a county for delinquent taxes pursuant to chapters 445 through 448, for which a responsible owner or operator able to pay, other than the county, cannot be found. A county is not a "responsible party" for a release in connection with property which it acquires in connection with delinquent taxes, and does not become a responsible party by sale or transfer of property so acquired.

e. For the costs of any other activities which the board determines are necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this chapter.

2. *Remedial account funding.* The remedial account shall be funded by that portion of the proceeds of the environmental protection charge imposed under chapter 424 and other moneys and revenues budgeted to the remedial account by the board.

3. *Trust fund to be established.* When the remedial account has accumulated sufficient capital to provide dependable income to cover the expenses of expected future releases or expected future losses for which no responsible owner is available, the excess capital shall be transferred to a trust fund administered by the board and created for that purpose. Collection of the environmental protection charge shall be discontinued when the trust fund is created and fully funded, except to resolve outstanding claims. The environmental protection charge may be reimposed to restore and recapitalize the trust fund in the event future losses deplete the fund so that the board does not expect it to have sufficient income and assets to cover expected future losses.

4. *Minimum copayment schedule for remedial account benefits.* An owner or operator who reports a release to the department of natural resources on or before October 26, 1990, shall pay the greater of five thousand dollars or twenty-five percent of the total costs of corrective action for that release. The remedial account shall pay the remainder, as required by federal regulations, of the total cost of the corrective action for that release, except that a county shall not be required to pay a copayment in connection with a release situated on property acquired in connection with delinquent taxes, as provided in subsection 1, paragraph "d", unless subsequent to acquisition the county actively operates a tank on the

property for purposes other than risk assessment, risk management, or tank closure.

5. *Priority of claims.* The board shall adopt rules to prioritize claims and allocate available money if funds are not available to immediately settle all current claims.

6. *Recovery of gain on sale of property.* If an owner or operator ceases to own or operate a tank site for which remedial account benefits were received within five years of the receipt of any account benefit and sells or transfers a property interest in the tank site for an amount which exceeds one hundred twenty percent of the precorrective action value, the owner or operator shall refund to the remedial account an amount equal to ninety percent of the amount in excess of one hundred twenty percent of the precorrective action value up to a maximum of the expenses incurred by the remedial account associated with the tank site plus interest, equal to the interest for the most recent twelve-month period for the most recent bond issue for the fund, on the expenses incurred, compounded annually. Expenses incurred by the fund are a lien upon the property recordable and collectible in the same manner as the lien provided for in section 424.11 at the time of sale or transfer, subject to the terms of this section.

This subsection shall not apply if the sale or transfer is pursuant to a power of eminent domain, or benefits. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

7. *Recurring releases treated as a newly reported release.* A release shall be treated as a release reported on or after May 5, 1989, if prior to May 5, 1989, a release was reported to the department, corrective action was taken pursuant to an assessment plan approved by the department, and the work performed was accepted by the department. For purposes of this subsection, work performed is accepted by the department if the department did not order further action within ninety days of the date on which the department had notice that the work was completed, unless the department clearly indicated in writing to the owner, operator, contractor, or other agent that additional work would be required beyond that specified in the assessment plan or in addition to the work actually performed.

89 Acts, ch 131, §50 HF 447; 89 Acts, ch 307, §46 SF 363

NEW section

Subsection 1, paragraph a, subparagraph (1), subparagraph subdivision (c) amended

#### **455G.10 Loan guarantee account.**

1. The board may create a loan guarantee account to offer loan guarantees to small businesses for the following purposes:

a. All or a portion of the expenses incurred by the applicant small business for its share of corrective action.

b. Tank and monitoring equipment improvements necessary to satisfy federal technical standards to become insurable.

Moneys from the environmental protection charge revenues may be used to fund the loan guarantee account according to the fund budget as approved by the board. Loan guarantees shall be made on terms and conditions determined by the board to be reasonable, except that in no case may a loan guarantee satisfy more than ninety percent of the outstanding balance of a loan.

2. A separate nonlapsing loan guarantee account is created within the fund. Any funds remaining in the account at the end of each fiscal year shall not revert to the fund or the general fund but shall remain in the account. The loan account shall be maintained by the treasurer of state. All expenses incurred by the loan account shall be payable solely from the loan account and no liability or obligation shall be imposed upon the state beyond this amount.

3. The board shall administer the loan guarantee account. The board may delegate administration of the account, provided that the administrator is subject to the board's direct supervision and direction. The board shall adopt rules regarding the provision of loan guarantees to financially qualified small businesses for the purposes permitted by subsection 1. The board may impose such terms and conditions as it deems reasonable and necessary or appropriate. The board shall take appropriate steps to publicize the existence of the loan account.

4. As a condition of eligibility for financial assistance from the loan guarantee account, a small business shall demonstrate satisfactory attempts to obtain financing from private lending sources. When applying for loan guarantee account assistance, the small business shall demonstrate good faith attempts to obtain financing from at least two financial institutions. The board may first refer a tank owner or operator to a financial institution eligible to participate in the fund under section 455G.16; however, if no such financial institution is currently willing or able to make the required loan, the small business shall determine if any of the previously contacted financial institutions would make the loan in participation with the loan guarantee account. The loan guarantee account may offer to guarantee a loan, or provide other forms of financial assistance to facilitate a private loan.

5. The maturity for each financial assistance package made by the board pursuant to this chapter shall be the shortest feasible term commensurate with the repayment ability of the small business borrower. However, the maturity date of a loan shall not exceed ten years and the guarantee is ineffective beyond the agreed term of the guarantee or ten years from initiation of the guarantee, whichever term is shorter.

6. The source of funds for the loan account shall be from the following:

a. Loan guarantee account income, including loan guarantee service fees, if any, and investment income attributed to the account by the board.

b. Moneys allocated to the account by the board according to the fund budget approved by the board.

c. Moneys appropriated by the federal government or general assembly and made available to the loan account.

7. A loan loss reserve account shall be established within the loan guarantee account. A default on a loan guaranteed under this section shall be paid from such reserve account. In administering the program the board shall not guarantee loan values in excess of the amount credited to the reserve account and only moneys set aside in the reserve account may be used for the payment of a default. A default is not eligible for payment until the lender has satisfied all administrative and legal remedies for settlement of the loan and the loan has been reduced to judgment by the lender. After the default has been reduced to judgment and the guarantee paid from the reserve account, the board is entitled to an assignment of the judgment. The board shall take all appropriate action to enforce the judgment or may enter into an agreement with the lender to provide for enforcement. Upon collection of the amount guaranteed, any excess collected shall be deposited into the fund. The general assembly is not obligated to appropriate any moneys to pay for any defaults or to appropriate any moneys to be credited to the reserve account. The loan guarantee program does not obligate the state or the board except to the extent provided in this section, and the board in administering the program shall not give or lend the credit of the state of Iowa.

89 Acts, ch 131, §51 HF 447

Section repealed effective July 1, 1999; repeal shall not affect outstanding contractual rights; 89 Acts, ch 131, §62 HF 447

NEW section

#### **455G.11 Insurance account.**

1. *Insurance account as a financial assurance mechanism.* The insurance account shall offer financial assurance for a qualified owner or operator under the

terms and conditions provided for under this section. Coverage may be provided to the owner or the operator, or to each separately. The board is not required to resolve whether the owner or operator, or both are responsible for a release under the terms of any agreement between the owner and operator.

2. *Limits of coverage available.* An owner or operator required to maintain proof of financial responsibility may purchase coverage up to the federally required levels for that owner or operator subject to the terms and conditions under this section and those adopted by the board.

3. *Eligibility of owners and operators for insurance account coverage.* An owner or operator, subject to underwriting requirements and such terms and conditions deemed necessary and convenient by the board, may purchase insurance coverage from the insurance account to provide proof of financial responsibility provided that a tank to be insured satisfies one of the following conditions:

a. Satisfies performance standards for new underground storage tank systems as specified by the federal environmental protection agency in 40 C.F.R. §280.20, as amended through January 1, 1989.

b. Has satisfied on or before the date of the application standards for upgraded underground storage tank systems as specified by the federal environmental protection agency in 40 C.F.R. §280.21, as amended through January 1, 1989.

c. The applicant certifies in writing to the board that the tank to be insured will be brought into compliance with either paragraph "a" or "b", on or before October 26, 1991, provided that prior to the provision of insurance account coverage, the tank site tests release free. For a tank qualifying for insurance coverage pursuant to this paragraph at the time of application or renewal, the owner or operator shall pay a per tank premium equal to two times the normally scheduled premium for a tank satisfying paragraph "a" or "b". An owner or operator who fails to comply as certified to the board on or before October 26, 1991, shall not insure that tank through the insurance account unless and until the tank satisfies the requirements of paragraph "a" or "b".

4. *Actuarially sound premiums based on risk factor adjustments after five years.* The annual premium for insurance coverage shall be:

a. For the year July 1, 1989, through June 30, 1990, one hundred dollars per tank.

b. For the year July 1, 1990, through June 30, 1991, one hundred fifty dollars per tank.

c. For the year July 1, 1991, through June 30, 1992, two hundred dollars per tank.

d. For the year July 1, 1992, through June 30, 1993, two hundred fifty dollars per tank.

e. For the year July 1, 1993, through June 30, 1994, three hundred dollars per tank.

f. For subsequent years, an owner or operator applying for coverage shall pay an annually adjusted insurance premium for coverage by the insurance account. The board may only approve fund coverage through the payment of a premium established on an actuarially sound basis. Risk factors shall be taken into account in establishing premiums. It is the intent of the general assembly that an actuarially sound premium reflect the risk to the insurance account presented by the insured. Risk factor adjustments should reflect the range of risk presented by the variety of tank systems, monitoring systems, and risk management practices in the general insurable tank population. Premium adjustments for risk factors should at minimum take into account lifetime costs of a tank and monitoring system and insurance account premiums for that tank system so as to provide a positive economic incentive to the owner or operator to install the more environmentally safe option so as to reduce the exposure of the insurance account to loss.

Actuarially sound is not limited in its meaning to fund premium revenue equaling or exceeding fund expenditures for the general tank population.

If coverage is purchased for any part of a year the purchaser shall pay the full annual premium.

*g.* The insurance account may offer, at the buyer's option, a range of deductibles. A ten thousand dollar deductible policy shall be offered.

5. *Future repeal.* The future repeal of this section shall not terminate the following obligations or authorities necessary to administer the obligations until these obligations are satisfied:

*a.* The payment of claims filed prior to the effective date of any future repeal, against the insurance account until moneys in the account are exhausted. Upon exhaustion of the moneys in the account, any remaining claims shall be invalid. If following satisfaction of the obligations pursuant to this section, moneys remain in the account, the remaining moneys and moneys due the account shall be prorated and returned to premium payers on an equitable basis as determined by the board.

*b.* The resolution of a cost recovery action filed prior to the effective date of the repeal.

6. *Installers' inclusion in fund.* The Iowa comprehensive petroleum underground storage tank fund board shall offer insurance coverage under the fund's insurance account to an installer of a certified underground storage tank installation within the state for environmental hazard coverage in connection with the certified installation as provided in this subsection. The board shall perform an actuarial study to determine the actuarially sound premiums, deductibles, terms, and conditions to be offered to installers for certified installations in Iowa. The insurance coverage offered to installers shall provide for no greater deductibles and the same or greater limits of coverage as offered to owners and operators of tanks. Coverage under this subsection shall be limited to environmental hazard coverage for both corrective action and third-party liability for a certified tank installation in Iowa in connection with a release from that tank.

The board shall adopt rules requiring certification of tank installations and require certification of a new tank installation as a precondition to offering insurance to an owner or operator or an installer. The board shall set in the rule the effective date for the certification requirement. Certification rules shall at minimum require that an installation be personally inspected by an independent licensed engineer, fire marshal or state fire marshal's designee qualified and authorized by the board to perform the required inspection and that the tank and installation of the tank comply with applicable technical standards and manufacturer's instructions and warranty conditions. An inspector shall not be an owner or operator of a tank, or an employee of an owner, operator, or installer. The insurance coverage shall be extended to premium paying installers on or before December 1, 1989. For the period from May 5, 1989, to and including the date that insurance coverage under the fund is extended to installers, the fund shall not seek third-party recovery from an installer.

The board's actuarial study shall include, but is not limited to, the following topics:

*a.* Actuarial estimate of the per-tank premium necessary to provide actuarially sound coverage to a tank installer for that certified tank installation. The study may include available loss data on past installations for installers, existing claims against installers for corrective action and third-party liability, and other information deemed relevant by the board.

*b.* The type of certification standards and procedures or other preconditions to providing coverage to a tank installer.

*c.* The cost and availability of private insurance for installers.

d. The number of installers doing business in the state.

e. Suggested limits of coverage, deductible levels, and other coverage features, terms, or conditions provided the same are no less favorable than that offered owners and operators under this section.

The results of the study shall be submitted to the division of insurance prior to the extension of coverage to installers under this subsection.

7. *Account expenditures.* Moneys in the insurance account may be expended for the following purposes:

a. To take corrective action for and to compensate a third party for damages, including but not limited to payment of a judgment for bodily injury or property damage caused by a release from a tank, where coverage has been provided to the owner or operator from the insurance account, up to the limits of coverage extended.

b. For the costs of any other activities as the board may determine are necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this chapter.

89 Acts, ch 131, §52 HF 447

Section repealed effective July 1, 2004, subject to the qualifications of subsection 5; 89 Acts, ch 131, §61

NEW section

#### **455G.12 Board authority for prioritization.**

If the board determines that, within the realm of sound business judgment and practice, prioritization of assistance is necessary in light of funds available for loan guarantees or insurance coverage, the board may develop rules for assistance or coverage prioritization based upon adherence or planned adherence of the owner or operator to higher than minimum environmental protection and safety compliance considerations.

Prior to the adoption of prioritization rules, the board shall at minimum review the following issues:

1. The positive environmental impact of assistance prioritization.
2. The economic feasibility, including the availability of private financing, for an owner or operator to obtain priority status.
3. Any negative impact on Iowa's rural petroleum distribution network which could result from prioritization.
4. Any similar prioritization systems in use by the private financing or insurance markets in this state, including terms, conditions, or exclusions.
5. The intent of this chapter that the board shall maximize the availability of reasonably priced, financially sound insurance coverage or loan guarantee assistance.

89 Acts, ch 131, §53 HF 447

NEW section

#### **455G.13 Cost recovery enforcement.**

1. *Full recovery sought from owner.* The board shall seek full recovery from the owner or operator of the tank which released the petroleum and which is the subject of a corrective action, for which the fund expends moneys for corrective action or third-party liability, and for all other costs or moneys expended by the fund in connection with the release. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

2. *Limitation of liability of owner or operator.* Except as provided in subsection 3:

a. The board or the department of natural resources shall not seek recovery for expenses in connection with corrective action for a release from an owner or operator eligible for assistance under the remedial account except for any unpaid portion of the deductible or copayment. This section does not affect any authorization of the department of natural resources to impose or collect civil or

administrative fines or penalties or fees. The remedial account shall not be held liable for any third-party liability.

b. An owner or operator's liability for a release for which coverage is admitted under the insurance account shall not exceed the amount of the deductible.

3. *Owner or operator not in compliance, subject to full and total cost recovery.* Notwithstanding subsection 2, the liability of an owner or operator shall be the full and total costs of corrective action and bodily injury or property damage to third parties, as specified in subsection 1, if the owner or operator has not complied with the financial responsibility or other underground storage tank rules of the department of natural resources or with this chapter and rules adopted under this chapter.

4. *Treble damages for certain violations.* Notwithstanding subsections 2 and 3, the owner or operator, or both, of a tank are liable to the fund for punitive damages in an amount equal to three times the amount of any cost incurred or moneys expended by the fund as a result of a release of petroleum from the tank if the owner or operator did any of the following:

a. Failed, without sufficient cause, to respond to a release of petroleum from the tank upon, or in accordance with, a notice issued by the director of the department of natural resources.

b. After May 5, 1989, failed to perform any of the following:

(1) Failed to register the tank, which was known to exist or reasonably should have been known to exist.

(2) Intentionally failed to report a known release.

The punitive damages imposed under this subsection are in addition to any costs or expenditures recovered from the owner or operator pursuant to this chapter and in addition to any other penalty or relief provided by this chapter or any other law.

However, the state, a city, county, or other political subdivision shall not be liable for punitive damages.

5. *Lien on tank site.* Any amount for which an owner or operator is liable to the fund, if not paid when due, by statute, rule, or contract, or determination of liability by the board or department of natural resources after hearing, shall constitute a lien upon the real property where the tank, which was the subject of corrective action, is situated, and the liability shall be collected in the same manner as the environmental protection charge pursuant to section 424.11.

6. *Joinder of parties.* The department of natural resources has standing in any case or contested action related to the fund or a tank, and upon motion and sufficient showing by a party, the court or the administrative law judge shall join to the action any person who may be liable for costs and expenditures of the type recoverable pursuant to this section.

7. *Strict liability.* The standard of liability for a release of petroleum or other regulated substance as defined in section 455B.471 is strict liability.

8. *Third-party contracts not binding on board, proceedings against responsible party.* An insurance, indemnification, hold harmless, conveyance, or similar risk-sharing or risk-shifting agreement shall not be effective to transfer any liability for costs recoverable under this section. The fund, board, or department of natural resources may proceed directly against the owner or operator or other allegedly responsible party. This section does not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs or expenditures under this chapter, and does not modify rights between the parties to an agreement.

9. *Later proceedings permitted against other parties.* The entry of judgment against a party to the action does not bar a future action by the board or the department of natural resources against another person who is later alleged to be or discovered to be liable for costs and expenditures paid by the fund. Subsequent

successful proceedings against another party shall not modify or reduce the liability of a party against whom judgment has been previously entered.

10. *Subrogation rights.* Payment of a claim by the fund pursuant to this chapter shall be conditioned upon the board's acquiring by subrogation the rights of the claimant to recover those costs and expenditures for corrective action for which the fund has compensated the claimant, from the person responsible or liable for the unauthorized release. A claimant is precluded from receiving double compensation for the same injury.

In an action brought pursuant to this chapter seeking damages for corrective action or third-party liability, the court shall permit evidence and argument as to the replacement or indemnification of actual economic losses incurred or to be incurred in the future by the claimant by reason of insurance benefits, governmental benefits or programs, or from any other source.

11. *Exclusion of punitive damages.* The fund shall not be liable in any case for punitive damages.

89 Acts, ch 131, §54 HF 447  
NEW section

#### **455G.14 Fund not subject to regulation.**

The fund, including but not limited to insurance coverage offered by the insurance account, is not subject to regulation under chapter 502 or title XX, chapters 505 through 523C.

89 Acts, ch 131, §55 HF 447  
NEW section

#### **455G.15 Fund not part of the Iowa insurance guaranty association.**

Notwithstanding any other provisions of law to the contrary, the fund shall not be considered an insurance company or insurer under the laws of this state and shall not be a member of nor be entitled to claim against the Iowa insurance guaranty association created under chapter 515B.

89 Acts, ch 131, §56 HF 447  
NEW section

#### **455G.16 Financial institution participation in fund.**

The board may impose conditions on the participation of a financial institution in the fund. Conditions shall be reasonably intended to increase the quantity of private capital available for loans to tank owners or operators who are small businesses within the meaning of section 455G.2. Additionally, the board may offer incentives to financial institutions meeting conditions imposed by the board. Incentives may include extended fund coverage of corrective action or third-party liability expenses, waiver of copayment or deductible requirements, or other benefits not offered to other participants, if reasonably intended to increase the quantity of private capital available for loans by an amount greater than the increased costs of the incentives to the fund.

89 Acts, ch 131, §57 HF 447  
NEW section

#### **455G.17 Inspectors—education—registration.**

1. The board shall adopt certification procedures and standards for the following classes of persons as underground storage tank installation inspectors:

a. A licensed engineer, except that if underground storage tank installation is within the scope of practice of a particular class of licensed engineer, additional training shall not be required for that class. A licensed engineer for whom underground storage tank installation is within the scope of practice shall be an "authorized inspector", rather than a "certified inspector".

b. A fire marshal.

2. The board shall adopt approved curricula for training engineers and fire marshals as a precondition to certification as underground storage tank installation inspectors.

3. The board shall adopt approved curricula for training persons to install underground storage tanks in such a manner that the resulting installation may be certified under section 455G.11, subsection 6.

4. The department of natural resources shall adopt approved curricula for training persons to conduct corrective actions consistent with the requirements of the department of natural resources.

5. The board shall require by rule that all certified or authorized underground storage tank inspectors register with the board and that all persons trained to perform or performing certified tank installations register with the board. A person's failure to register shall not affect the person's certification, or the certification of an otherwise eligible installation performed by that person, but rules may provide for a civil penalty of no more than fifty dollars. The board may provide a list of registrants to any interested person. The board may impose a fee for registration to recover the costs of administering the registration account.

89 Acts, ch 131, §58 HF 447  
NEW section

## CHAPTER 456

### DISSOLUTION OF DRAINAGE DISTRICTS

Transferred to §468.250 through §468.261; 89 Acts, ch 126 SF 479

## CHAPTER 457

### INTERCOUNTY LEVEE OR DRAINAGE DISTRICTS

Transferred to §468.270 through §468.299; 89 Acts, ch 126 SF 479

## CHAPTER 458

### CONVERTING INTRACOUNTY DISTRICTS INTO INTERCOUNTY DISTRICT

Transferred to §468.305 through §468.309; 89 Acts, ch 126 SF 479

## CHAPTER 459

### DRAINAGE DISTRICTS EMBRACING PART OR WHOLE OF CITY

Transferred to §468.315 through §468.327; 89 Acts, ch 126 SF 479

**CHAPTER 460****HIGHWAY DRAINAGE DISTRICTS**

*Transferred to §468.335 through §468.347; 89 Acts, ch 126 SF 479*

**CHAPTER 461****DRAINAGE AND LEVEE DISTRICTS WITH PUMPING STATIONS**

*Transferred to §468.355 through §468.383; 89 Acts, ch 126 SF 479*

**CHAPTER 462****MANAGEMENT OF DRAINAGE OR LEVEE DISTRICTS BY TRUSTEES**

*Transferred to §468.500 through §468.537; 89 Acts, ch 126 SF 479*

**CHAPTER 463****DRAINAGE REFUNDING BONDS**

*Transferred to §468.540 through §468.567; 89 Acts, ch 126 SF 479*

**CHAPTER 464****DEFAULTED DRAINAGE BONDS**

*Transferred to §468.570 through §468.581; 89 Acts, ch 126 SF 479*

**CHAPTER 465****INDIVIDUAL DRAINAGE RIGHTS**

*Transferred to §468.600 through §468.634; 89 Acts, ch 126 SF 479*

**CHAPTER 466****DRAINAGE DISTRICTS IN CONNECTION WITH UNITED STATES LEVEES**

*Transferred to §468.390 through §468.397; 89 Acts, ch 126 SF 479*

**CHAPTER 467****INTERSTATE DRAINAGE DISTRICTS**

*Transferred to §468.400 through §468.405; 89 Acts, ch 126 SF 479*

## 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.

89 Acts, ch 83, §55 SF 112  
Subsections 14 and 15 stricken

**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 467F. 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 467F before the rules are adopted pursuant to section 17A.5. If a difference exists between the committee and secretary regarding the content of a proposed rule, the secretary shall notify the chairperson of the committee of the difference within thirty days from the committee's action on the rule. The secretary and the committee shall meet to resolve the difference within thirty days after the secretary provides the committee with notice of the difference.

The state soil conservation committee consists of a chairperson and eight other voting 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 six geographic regions in the state, including northwest, southwest, north central, south central, northeast, and southeast Iowa, and no more than one of whom shall be a resident of any one county. The boundaries of the geographic regions shall be established by rule. 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. 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. The committee may perform acts, hold public hearings, and propose and approve rules pursuant to chapter 17A as necessary for the execution of its functions.

2. The committee shall recommend three persons to the secretary of agriculture who shall appoint from the persons recommended an administrative director to head the division who shall serve at the pleasure of the secretary. After reviewing the names submitted, the secretary may request the soil conservation committee to submit additional names for consideration. The committee shall recommend to the secretary each year a budget for the division. The secretary, at the earliest opportunity and prior to formulating a budget, shall meet with representatives of the committee to discuss the committee's recommendation. 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 take notice of each district's long-range resource conservation plan established under section 467A.7, in order 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 assist each soil and water conservation district in developing a district soil and water resource conservation plan as provided under section 467A.7. The plan shall be developed according to rules adopted by the division to preserve and protect the public interest in the soil and water resources of this state for future generations and for this purpose to encourage, promote, facilitate, and where such public interest requires, to mandate the conservation and proper control of and use of the soil and water resources of this state, by measures including, but not limited to, the control of floods, the control of erosion by water or by wind, the preservation of the quality of water for its optimum use for agricultural, irrigation, recreational, industrial, and domestic purposes, all of which shall be presumed to be conducive to the public health, convenience, and welfare, both present and future.

h. To file the district soil and water resource conservation plans as part of a state soil and water resource conservation plan. The state plan shall contain on a statewide basis the information required for a district plan under this section.

i. 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.

89 Acts, ch 83, §56 SF 112; 89 Acts, ch 106, §2 SF 318

Transition provisions; 89 Acts, ch 106, §9 SF 318

See Code editor's note to §22.7

Subsections 1 and 2 amended

#### 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. 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.

<sup>89</sup> Acts, ch 136, §73 SF 371

\*Established as "soil conservation districts"

Subsection 3 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 herein-after 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. Reserved.

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 course work relating to conservation of natural resources and environmental awareness required in rules adopted by the state board of education 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.

20. To develop a soil and water resource conservation plan for the district.

a. The district plan shall contain a comprehensive long-range assessment of soil and surface water resources in the district consistent with rules approved by the committee under section 467A.4. In developing the plan the district may receive technical support from the United States department of agriculture's soil conservation service and the county board of supervisors in the county where the district is located. The division and the Iowa cooperative extension service in agriculture and home economics may provide technical support to the district. The support may include, but is not limited to, the following: assessing the condition of soil and surface water in the district, including an evaluation of the type, amount, and quality of soil and water, the threat of soil erosion and erosion, floodwater, and sediment damages, and necessary preventative and control measures; developing methods to maintain or improve soil and water condition; and cooperating with other state and federal agencies to carry out this support.

b. The district plan shall be filed with the recorder in the county in which the district is located and shall be filed with the division as part of the state soil and water resource conservation plan, and amended or updated as necessary, after the committee approves the district plan and after the administrator of the division signs the district plan. The commissioners shall provide notice of the filing and may provide a copy of the approved district plan to the county board of supervisors in the county where the district is located.

21. To enter into agreements pursuant to chapter 467F with the owner or occupier of land within the district or cooperating districts, or any other private entity or public agency, in carrying out water protection practices, including district and multidistrict projects to protect this state's groundwater and surface water from point and nonpoint sources of contamination, including but not limited to agricultural drainage wells, sinkholes, sedimentation, and chemical pollutants.

89 Acts, ch 83, §57 SF 112  
Subsection 15 stricken

**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 committee 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 committee, 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 is 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 committee 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 committee setting forth the determination of the committee 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 committee is substituted for the district or commissioners as party to the contracts. The committee 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 committee 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.

89 Acts, ch 106, §3 SF 318  
Section 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 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.

89 Acts, ch 83, §58 SF 112  
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 committee.

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 committee.

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 is 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. 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.

89 Acts, ch 106, §4 SF 318

\*Chapter 467D repealed July 1, 1988; 86 Acts, ch 1245, §668

Subsection 2, paragraphs a and b 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 state soil conservation committee, 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 committee 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 committee 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.

89 Acts, ch 106, §5 SF 318  
Unnumbered paragraph 1 amended

#### **467A.45 Submission of regulations to committee—hearing.**

Regulations which the commissioners propose to adopt, amend, or repeal shall be submitted to the committee, in a form prescribed by the committee, for its approval. The committee 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.

89 Acts, ch 106, §6 SF 318  
Section amended

#### **467A.46 Conduct of hearing.**

At the hearing, the commissioners or their designees shall explain, in reasonable detail, the reasons why adoption, amendment, or repeal of the regulations is deemed necessary or advisable. Any landowner, or any occupant of land who would be affected by the regulations, shall be afforded an opportunity to be heard for or against the proposed regulations. At the conclusion of the hearing, the commissioners shall announce and enter of record their decision whether to adopt or modify the proposed regulations. Any modification must be approved by the committee, which may at its discretion order the commissioners to republish the regulations and hold another hearing in the manner prescribed by this chapter.

89 Acts, ch 106, §7 SF 318  
Section 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 committee 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 committee 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.

89 Acts, ch 106, §8 SF 318  
Subsections 1 and 2 amended

#### **467A.53 Co-operation with other agencies.**

Soil and water conservation districts may enter into agreements with the federal government or an agency of the federal government, as provided by state law, or with the state of Iowa or an agency of the state, any other soil and water conservation district, or any 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, money disbursed for soil erosion control purposes by the federal government or an agency of the federal government, and expend the money for the purposes for which it was received.

89 Acts, ch 83, §59 SF 112  
Section 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, 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 cooperation with the federal government, or a 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.

89 Acts, ch 83, §60 SF 112  
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, 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.

89 Acts, ch 83, §61 SF 112  
Section amended

#### **467B.3 Co-operation.**

The counties, soil and water conservation districts, and subdistricts of soil and water conservation districts concerned, 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.

89 Acts, ch 83, §62 SF 112  
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, political subdivisions of the state, or other local agencies, or the federal government, or a 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.

89 Acts, ch 83, §63 SF 112  
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, a subdistrict of a soil and water conservation 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.

89 Acts, ch 83, §64 SF 112  
Section amended

## CHAPTER 467F

### WATER PROTECTION PROJECTS AND PRACTICES

#### **467F.4 Water protection fund.**

A water protection fund is created within the division. The fund is composed of money appropriated by the general assembly for that purpose, and moneys available to and obtained or accepted by the state soil conservation committee from the United States or private sources for placement in the fund. The fund shall be divided into two accounts, the water quality protection account and the water protection practices account. The first account shall be used to carry out water quality protection projects to protect the state's surface and groundwater from point and nonpoint sources of contamination. The second account shall be used to establish water protection practices with individual landowners including but not limited to woodland establishment and protection, establishment of native grasses and forbs, sinkhole management, agricultural drainage well management, streambank stabilization, grass waterway establishment, stream buffer strip establishment, and erosion control structure construction. Twenty-five percent of funds appropriated to the water protection practices account shall be used for woodland establishment and protection, and establishment of native grasses and forbs. Soil and water conservation district commissioners shall give priority to applications for practices that implement their soil and water resource conservation plan. The fund shall be a revolving fund from which moneys may be used for loans, grants, administrative costs, and cost-sharing.

In administering the fund the division may:

1. Contract, sue and be sued, and adopt rules necessary to carry out the provisions of this section, but the division or committee shall not in any manner directly or indirectly pledge the credit of this state.

2. Authorize payment from the water protection fund, from fees and from any income received by investments of money in the fund for costs, commissions, and other reasonable expenses.

89 Acts, ch 236, §16 HF 769  
Unnumbered paragraph 1 and subsection 2 amended

## CHAPTER 468

### LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS

Chapters 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, and sections 331.485 through 331.491 transferred to chapter 468; 89 Acts, ch 126, §2, 3 SF 479

#### SUBCHAPTER I

#### ESTABLISHMENT

#### PART 1

#### GENERAL

#### **468.1 Jurisdiction to establish.**

The board of supervisors of any county shall have jurisdiction, power, and authority at any regular, special, or adjourned session, to establish a drainage district or districts, and to locate and establish levees, and cause to be constructed as hereinafter provided any levee, ditch, drain, or watercourse, or settling basins in connection therewith, or to straighten, widen, deepen, or change any natural watercourse, in such county, whenever the same will be of public utility or conducive to the public health, convenience or welfare.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.1 in 1989 Code to §468.1 in 1989 Code Supplement

#### **468.2 Presumption and construction of laws.**

1. The drainage of surface waters from agricultural lands and all other lands or the protection of such lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience, and welfare.

2. The provisions of this subchapter and all other laws for the drainage and protection from overflow of agricultural or overflow lands shall be liberally construed to promote leveeing, ditching, draining, and reclamation of wet, swampy, and overflow lands.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.2 and §455.182 in 1989 Code to §468.2 in 1989 Code Supplement

#### **468.3 Definitions.**

1. The term "*appraisers*" shall mean the persons appointed and qualified to ascertain the value of all land taken and the amount of damage arising from the construction of levee or drainage improvements.

2. Within the meaning of this subchapter, parts 1 through 5, and subchapter II, part 1, the term "*board*" shall embrace the board of supervisors, the joint boards of supervisors in case of intercounty levee or drainage districts, and the board of trustees in case of a district under trustee management.

3. The term "*commissioners*" shall mean the persons appointed and qualified to classify lands, fix percentages of benefits, apportion and assess costs and expenses in any levee or drainage district, unless otherwise specifically indicated by law.

4. The term "*cost of improvements*" means the costs of any improvement which is subject to special assessment, including but not limited to, the costs of engineering, preliminary reports, property valuations, estimates, plans, specifications, notices, acquisition of land, easements, rights of way, construction, repair, supervision, inspection, testing, notices and publication, interest during construction and for a reasonable period following the completion of construction, and may include the default fund which shall amount to not more than ten percent of the total cost of an improvement assessed against benefited property.

5. For the purpose of this subchapter, parts 1 through 5, and with reference to improvements along or adjacent to the Missouri river the word "*levee*" shall be construed to include, in addition to its ordinary and accepted meaning, embankments, revetments, retards, or any other approved system of construction which

may be deemed necessary to adequately protect the banks of any river or stream, within or adjacent to any county, from wash, cutting, or erosion.

6. The term "engineer" and the term "civil engineer", within the meaning of this subchapter, parts 1 through 5, subchapter II, parts 1, 4, 5, and 6, and subchapter V, shall mean a person registered as a professional engineer under the provisions of chapter 114.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.3 and §455.4 in 1989 Code to §468.3 in 1989 Code Supplement

#### **468.4 General rule for location.**

The levees, ditches, or drains herein provided for shall, so far as practicable, be surveyed and located along the general course of the natural streams and watercourses or in the general course of natural drainage of the lands of said district; but where it will be more economical or practicable such ditch or drain need not follow the course of such natural streams, watercourses, or course of natural drainage, but may straighten, shorten, or change the course of any natural stream, watercourse, or general course of drainage.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.5 in 1989 Code to §468.4 in 1989 Code Supplement

#### **468.5 Location across railroad.**

When any such ditch or drain crosses any railroad right of way, it shall when practicable be located at the place of the natural waterway across such right of way, unless said railroad company shall have provided another place in the construction of the roadbed for the flow of the water; and if located at the place provided by the railroad company, such company shall be estopped from afterwards objecting to such location on the ground that it is not at the place of the natural waterway.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.6 in 1989 Code to §468.5 in 1989 Code Supplement

#### **468.6 Number of petitioners required.**

Two or more owners of lands named in the petition described in section 468.8, may file in the office of the county auditor a petition for the establishment of a levee or drainage district, including a district which involves only the straightening of a creek or river. If the district described in the petition is a subdistrict, one or more owners of land affected by the proposed improvement may petition for such district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.7 in 1989 Code to §468.6 in 1989 Code Supplement

#### **468.7 Request by nonpetitioners.**

In the event two or more landowners included in the proposed district other than the petitioners request a classification prior to the establishment of said district, they shall file in writing their request and execute a bond as required in section 468.9 to cover the expense of such classification if the district is not established. Such written request and the bond shall be filed before the board establishes a district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.8 in 1989 Code to §468.7 in 1989 Code Supplement

#### **468.8 Petition.**

The petition shall set forth:

1. An intelligible description, by congressional subdivision or otherwise, of the lands suggested for inclusion in the district.
2. That said lands are subject to overflow or are too wet for cultivation or subject to erosion or flood danger.
3. That the public benefit, utility, health, convenience, or welfare will be promoted by the suggested improvements.

4. The suggested starting point, route, terminus and lateral branches of the proposed improvements.

5. In the event the petitioners request a classification before the establishment of the district, the petition shall include a request that the district be classified as provided in sections 468.38 through 468.44 after the board has approved the report of the engineer as a tentative plan but before the district is finally established.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.9 in 1989 Code to §468.8 in 1989 Code Supplement

#### **468.9 Bond.**

1. There shall be filed with the petition a bond in an amount fixed and with sureties approved by the auditor, conditioned for the payment of all costs and expenses incurred in the proceedings in case the district is not finally established.

2. No preliminary expense shall be incurred before the establishment of such proposed improvement district by the board in excess of the amount of bond filed by the petitioners. In case it is necessary to incur any expense in addition to the amount of such bond, the board of supervisors shall require the filing of an additional bond by the petitioners and shall not proceed with the preliminary survey or authorize any additional expense until the additional bond is filed in a sufficient amount to cover such expense.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.10 and §455.11 in 1989 Code to §468.9 in 1989 Code Supplement

#### **468.10 Engineer.**

1. The board shall at its first session thereafter, regular, special, or adjourned, examine the petition and if it be found sufficient in form and substance, shall appoint a disinterested and competent civil engineer who shall give bond to the county for the use of the proposed levee or drainage district, if it be established, and if not established, for the use of the petitioners, in amount and with sureties to be approved by the auditor, and conditioned for the faithful and competent performance of the engineer's duties.

2. Any engineer employed under the provisions of this subchapter, parts 1 through 5 shall receive such compensation per diem as shall be fixed and determined by the board of supervisors.

3. The board may at any time terminate the contract with, and discharge the engineer.

4. Assistants may be employed by the engineer only with the approval of the board, which shall fix their compensation.

5. The engineer shall keep an accurate record of the kind of work done by the engineer and each assistant, the place where done, and the time engaged therein, and shall file an itemized statement thereof with the auditor. No expenses shall be incurred by the engineer except upon authority of the board, and vouchers shall be filed with the claims therefor.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.12-455.16 in 1989 Code to §468.10 in 1989 Code Supplement

#### **468.11 Survey.**

The engineer shall examine the lands described in the petition and any other lands which would be benefited by said improvement or necessary in carrying out the same.

The engineer shall locate and survey such ditches, drains, levees, settling basins, pumping stations, and other improvements as will be necessary, practicable, and feasible in carrying out the purposes of the petition and which will be of public benefit or utility, or conducive to public health, convenience, or welfare.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.17 in 1989 Code to §468.11 in 1989 Code Supplement

**468.12 Report.**

The engineer shall make full written report to the county auditor, setting forth:

1. The starting point, route, and terminus of each ditch, drain, and levee and the character and location of all other improvements.

2. A plat and profile, showing all ditches, drains, levees, settling basins, and other improvements, the course, length, and depth of each ditch, the length, size, and depth of each drain, and the length, width, and height of each levee, through each tract of land, and the particular descriptions and acreage of the land required from each forty-acre tract or fraction thereof as right of way, or for settling basin or basins, together with the congressional or other description of each tract and the names of the owners thereof as shown by the transfer books in the office of the auditor. Said plat shall describe the width of the right of way to be taken from each forty-acre tract or fraction thereof.

3. The boundary of the proposed district, including therein by color or other designation other lands that will be benefited or otherwise affected by the proposed improvements, together with the location, size, and elevation of all lakes, ponds, and deep depressions therein.

4. Plans for the most practicable and economic place and method for passing machinery, equipment, and material required in the construction of said improvements across any highways, railroads, and other utilities within the proposed district.

5. The probable cost of the proposed improvements, together with such other facts and recommendations as the engineer shall deem material.

Where the proposed district contemplates as its object flood control or soil conservance the engineer shall include in the report data describing any soil conservance or flood control improvements, the nature of the improvements, and other data as prescribed by the department of water, air and waste management.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.18 in 1989 Code to §468.12 in 1989 Code Supplement

**468.13 Procedure on report—classification.**

Upon the filing of the report of the engineer recommending the establishment of the levee or drainage district, the board shall at its first regular, adjourned, or special meeting examine and consider the same, and, if the plan is not approved the board may employ said engineer or another disinterested engineer to report another plan or make additional examination and surveys and file an additional report covering such matters as the board may direct. Additional surveys and reports must be made in accordance with the provisions of sections 468.11 and 468.12. At any time prior to the final adoption of the plans they may be amended, and as finally adopted by the board shall be conclusive unless the action of the board in finally adopting them shall be appealed from as hereinafter provided.

If the petition or other landowners requested a classification of the district prior to establishment, the board shall order a classification as provided by sections 468.38 through 468.44 after they have approved the report of the engineer as a tentative plan. The notice of hearing provided by section 468.14 shall also include the requirements of the notice of hearing provided in section 468.45 as to this classification, and the hearing on the petition provided in section 468.21 shall also include the matters to be heard as provided in section 468.46. If the board establishes the district as provided in section 468.22, the classification which is finally approved at said hearing by the board shall remain the basis of all future assessments for the purposes of said district as provided in section 468.49. The landowners shall have the same right of appeal from this classification as they would have if the petition had not requested a classification prior to establishment and the classification had been made after establishment.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.19 in 1989 Code to §468.13 in 1989 Code Supplement

#### 468.14 Notice of hearing.

When any plan and report of the engineer has been approved by the board, such approval shall be entered of record in its proceedings as a tentative plan only for the establishment of said improvement. Thereupon it shall enter an order fixing a date for the hearing upon the petition not less than forty days from the date of the order of approval, and directing the auditor immediately to cause notice to be given to the owner of each tract of land or lot within the proposed levee or drainage district as shown by the transfer books of the auditor's office, including railway companies having right of way in the proposed district and to all lienholders or encumbrancers of any land within the proposed district without naming them, and also to all other persons whom it may concern, and without naming individuals all actual occupants of the land in the proposed district, of the pendency and prayer of the said petition, the favorable report thereon by the engineer, and that such report may be amended before final action, the approval thereof by the board as a tentative plan, and the day and the hour set for hearing on said petition and report, and that all claims for damages except claims for land required for right of way, and all objections to the establishment of said district for any reason must be made in writing and filed in the office of the auditor at or before the time set for such hearing.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.20 in 1989 Code to §468.14 in 1989 Code Supplement

#### 468.15 Service by publication—copy mailed—proof.

The notice provided in section 468.14 shall be served by publication as provided in section 331.305 before the hearing except that the notice shall be published at least twenty days before the hearing date. 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.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.21 in 1989 Code to §468.15 in 1989 Code Supplement

#### 468.16 Service on agent.

If any person, corporation, or company owning or having interest in any land or other property affected by any proposed improvement under this chapter\* shall file with the auditor an instrument in writing designating the name and post-office address of the agent of the person, corporation, or company upon whom service of notice of said proceeding shall be made, the auditor shall, not less than twenty days prior to the date set for hearing upon said petition, send a copy of said notice by certified mail addressed to the agent so designated. Proof of such service shall be made by affidavit of the auditor filed in said proceeding at or before the date of the hearing upon the petition, and such service shall be in lieu of all other service of notice to such persons, corporations, or companies.

This designation when filed shall be in force for a period of five years thereafter and shall apply to all proceedings under said chapters during such period. The person, company, or corporation making such designation shall have the right to change the agent appointed therein or to amend it in any other particular.

89 Acts, ch 126, §2, 3 SF 479

\*Subchapter I, part 6, and subchapter IV enacted after this section was enacted; subchapter II, part 2, was enacted as an amendment to subchapter II, part 1, see 41 GA, ch 155

Transferred from §455.22 in 1989 Code to §468.16 in 1989 Code Supplement

**468.17 Personal service.**

In lieu of publication, personal service of said notice may be made upon any owner of land in the proposed district, or upon any lienholder or other person interested in the proposed improvement, in the manner and for the time required for service of original notices in the district court. Proof of such service shall be on file with the auditor on the date of said hearing.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.23 in 1989 Code to §468.17 in 1989 Code Supplement

**468.18 Waiver of notice.**

No service of notice shall be required upon any person who shall file with the auditor a statement in writing, signed by the person, waiving notice, or who enters an appearance in the proceedings. The filing of a claim for damages or objections to the establishment of said district or other pleading shall be deemed an appearance.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.24 in 1989 Code to §468.18 in 1989 Code Supplement

**468.19 Waiver of objections and damages.**

Any person, company, or corporation failing to file any claim for damages or objections to the establishment of the district at or before the time fixed for said hearing, except claims for land required for right of way, or for settling basins, shall be held to have waived all objections and claims for damages.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.25 in 1989 Code to §468.19 in 1989 Code Supplement

**468.20 Adjournment for service—jurisdiction retained.**

If at the date set for hearing, it shall appear that any person entitled to notice has not been properly served with notice, the board may postpone said hearing and set another time for the same not less than thirty days from said date, and notice of such hearing as hereinbefore provided shall be served on such omitted parties. By fixing such new date for hearing and the adjournment of said proceeding to said date, the board shall not lose jurisdiction of the subject matter of said proceeding nor of any parties already served with notice.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.26 in 1989 Code to §468.20 in 1989 Code Supplement

**468.21 Hearing of petition—dismissal.**

At the time set for hearing on said petition the board shall hear and determine the sufficiency of the petition in form and substance (which petition may be amended at any time before final action thereon), and all objections filed against the establishment of such district, and the board may view the premises included in the said district. If it shall find that the construction of the proposed improvement will not materially benefit said lands or would not be for the public benefit or utility nor conducive to the public health, convenience, or welfare, or that the cost thereof is excessive it shall dismiss the proceedings.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.27 in 1989 Code to §468.21 in 1989 Code Supplement

**468.22 Establishment—further investigation.**

If the board shall find that such petition complies with the requirements of law in form and substance, and that such improvement would be conducive to the public health, convenience, welfare, benefit, or utility, and that the cost thereof is not excessive, and no claim shall have been filed for damages, it may locate and establish the said district in accordance with the recommendation of the engineer and the report and plans on file; or it may refuse to establish the proposed district if it deem best, or it may direct the engineer or another one employed for that purpose to make further examinations, surveys, plats, profiles, and reports for the

modification of said plans, or for new plans in accordance with sections 468.11 and 468.12, and continue further hearing to a fixed date. All parties over whom the board then has jurisdiction shall take notice of such further hearing; but any new parties rendered necessary by any modification or change of plans shall be served with notice as for the original establishment of a district. The county auditor shall appoint three appraisers as provided for in section 468.24 to assess the value of the right of way required for open ditches or other improvements.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.28 in 1989 Code to §468.22 in 1989 Code Supplement

**468.23 Settling basins—purchase or lease of lands.**

If a settling basin or basins are provided as a part of a drainage improvement, the board of supervisors may buy or lease the necessary lands in lieu of condemning said lands. The board may by purchase acquire the necessary lands required for right of way for open ditches or other improvements in lieu of condemning said lands.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.29 in 1989 Code to §468.23 in 1989 Code Supplement

**468.24 Appraisers.**

If the board shall find that such improvement will materially benefit said lands, will be conducive to the public health, convenience, welfare, benefit, or utility, and that the law has been complied with as to form and substance of the petition, the service of notice, and the survey and report of the engineer, and that said improvement should be made, then if any claims for damages shall have been filed, further proceedings shall be continued to an adjourned, regular, or special session, the date of which shall be fixed at the time of adjournment, and of which all interested parties shall take notice, and the auditor shall appoint three appraisers to assess damages, one of whom shall be an engineer, and two freeholders of the county who shall not be interested in nor related to any person interested in the proposed improvement, and the said appraisers shall take and subscribe an oath to examine the said premises, ascertain and impartially assess all damages according to their best judgment, skill, and ability.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.30 in 1989 Code to §468.24 in 1989 Code Supplement

**468.25 Assessment—report—adjournment—other appraisers.**

The appraisers appointed to assess damages shall view the premises and determine and fix the amount of damages to which each claimant is entitled, and shall place a separate valuation upon the acreage of each owner taken for right of way for open ditches or for settling basins, as shown by plat of engineer, and shall, at least five days before the date fixed by the board to hear and determine the same, file with the county auditor reports in writing, showing the amount of damage sustained by each claimant. Should the report not be filed in time, or should any good cause for delay exist, the board may postpone the time of final action on the subject, and, if necessary, the auditor may appoint other appraisers.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.31 in 1989 Code to §468.25 in 1989 Code Supplement

**468.26 Award by board.**

At the time fixed for hearing and after the filing of the report of the appraisers, the board shall examine said report, and may hear evidence thereon, both for and against each claim for damages and compensation, and shall determine the amount of damages and compensation due each claimant, and may affirm, increase, or diminish the amount awarded by the appraisers.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.32 in 1989 Code to §468.26 in 1989 Code Supplement

### **468.27 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 468.11 and 468.12 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.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.33 in 1989 Code to §468.27 in 1989 Code Supplement

### **468.28 Dismissal on remonstrance.**

If, at or before the time set for final hearing as to the establishment of a proposed levee, drainage, or improvement district, except subdrainage district, there shall have been filed with the county auditor, or auditors, in case the district extends into more than one county, a remonstrance signed by a majority of the landowners in the district, and these remonstrants must in the aggregate own seventy percent or more of the lands to be assessed for benefits or taxed for said improvements, remonstrating against the establishment of said levee, drainage, or improvement district, setting forth the reasons therefor, the board or boards as the case may be, shall assess to the petitioners and their sureties or apportion the costs among them as the board or boards may deem just or as said parties may agree upon. When all such costs have been paid, the board or boards of supervisors shall dismiss said proceedings and cause to be filed with the county auditor all surveys, plats, reports, and records in relation to the proposed district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.34 in 1989 Code to §468.28 in 1989 Code Supplement

### **468.29 Dissolution.**

When for a period of two years from and after the date of the establishment of a drainage district, or when an appeal is taken or litigation brought against said district within two years from the date such appeal or litigation is finally determined, no contract shall have been let or work done or drainage certificates or bonds issued for the construction of the improvements in such district, a petition may be filed in the office of the auditor, addressed to the board of supervisors, signed by a majority of the persons owning land in such district and who, in the aggregate, own sixty percent or more of all the land embraced in said district, setting forth the above facts and reciting that provision has been made by the petitioners for the payment of all costs and expenses incurred on account of such district. The board shall examine such petition at its next meeting after the filing thereof, and if found to comply with the above requirements, shall dissolve and vacate said district by resolution entered upon its records, to become effective upon the payment of all the costs and expenses incurred in relation to said

district. In case of such vacation and dissolution and upon payment of all costs as herein provided, the auditor shall note the same on the drainage record, showing the date when such dissolution became effective.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.35 in 1989 Code to §468.29 in 1989 Code Supplement

**468.30 Permanent survey, plat and profile.**

When the improvement has been finally located and established, the board may if necessary appoint the said engineer or a new one to make a permanent survey of said improvement as so located, showing the levels and elevations of each forty-acre tract of land and file a report of the same with the county auditor together with a plat and profile thereof.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.36 in 1989 Code to §468.30 in 1989 Code Supplement

**468.31 Paying or securing damages.**

The amount of damages or compensation finally determined in favor of any claimant shall be paid in the first instance by the parties benefited by the said improvement, or secured by bond in the amount of such damages and compensation with sureties approved by the auditor.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.37 in 1989 Code to §468.31 in 1989 Code Supplement

**468.32 Division of improvement.**

After the damages as finally fixed, shall have been paid or secured, the board may divide said improvement into suitable sections, having regard to the kind of work to be done, numbering the same consecutively from outlets to the beginning, and prescribing the time within which the improvement shall be completed. A settling basin, if provided for, may be embraced in a section by itself.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.38 in 1989 Code to §468.32 in 1989 Code Supplement

**468.33 Supervising engineer—bond.**

Upon the payment or securing of damages, the board shall appoint a competent engineer to have charge of the work of construction thereof, who shall be required before entering upon the work to give a bond to the county for the use and benefit of the levee or drainage district, to be approved by the auditor in such sum as the board may fix, conditioned for the faithful discharge of the engineer's duties.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.39 in 1989 Code to §468.33 in 1989 Code Supplement

**468.34 Advertisement for bids.**

The board shall publish notice once each week for two consecutive weeks in a newspaper published in the county where the improvement is located, and publish additional advertisement and publication elsewhere as the board may direct. The notice shall state the time and place of letting the work of construction of the improvement, specifying the approximate amount of work to be done in each numbered section of the district, the time fixed for the commencement, and the time of the completion of the work, that bids will be received on the entire work and in sections or divisions of it, and that a bidder will be required to deposit with the bid cash, a certified check on and certified by a bank in Iowa, or a certified share draft from a credit union in Iowa payable to the auditor or the auditor's order, at the auditor's office, in an amount equal to ten percent of the bid, in no case to exceed ten thousand dollars. If the estimated cost of the improvement exceeds fifteen thousand dollars, the board may make additional publication for two consecutive weeks in a contractors' journal of general circulation, giving only the type of proposed construction or repairs, estimated amount, date of letting, amount of bidder's bond, and name and address of the county auditor. All notices

shall fix the date to which bids will be received and upon which the work will be let. However, when the estimated cost of the improvement is less than five thousand dollars, the board may let the contract for the construction without taking bids and without publishing notice.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.40 in 1989 Code to §468.34 in 1989 Code Supplement

#### **468.35 Bids—letting of work.**

1. The board shall award contract or contracts for each section of the work to the lowest responsible bidder or bidders therefor, bids to be submitted, received and acted upon separately as to the main drain and each of the laterals, and each settling basin, if any, exercising their own discretion as to letting such work as to the main drain as a whole, or as to each lateral as a whole, or by sections as to both main drain and laterals, and reserving the right to reject any and all bids and readvertise the letting of the work.

2. A bid shall be in writing, specifying the portion of the work upon which the bid is made, and filed with the auditor. The bid shall be accompanied with a deposit of cash, or a certified check on and certified by a bank in Iowa or a certified share draft drawn on a credit union in Iowa, payable to the auditor or the auditor's order at the auditor's office in a sum equal to ten percent of the amount of the bid, but not to exceed ten thousand dollars. However, if the maximum limit on bid deposits would cause a denial of funds or services from the federal government which would otherwise be available, or if the maximum limit would otherwise be inconsistent with the requirements of federal law, the maximum limit may be suspended to the extent necessary to prevent denial of federal funds or services or to eliminate the inconsistency with federal requirements. The checks or share drafts of unsuccessful bidders shall be returned to them, but the checks of successful bidders shall be held as a guarantee that they will enter into contract in accordance with their bids.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.41 and 455.42 in 1989 Code to §468.35 in 1989 Code Supplement

#### **468.36 Performance bond—return of deposit.**

A successful bidder is required to execute a bond with sureties approved by the auditor in favor of the county for the use and benefit of the levee or drainage district and all persons entitled to liens for labor or material in an amount not less than seventy-five percent of the contract price of the work to be done, conditioned for the timely, efficient, and complete performance of the contract, and the payment, as they become due, of all just claims for labor performed and material used in carrying out the contract. When a contract is executed and bond approved by the board, the certified check or certified share draft deposited with the bid shall be returned to the bidder.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.43 in 1989 Code to §468.36 in 1989 Code Supplement

#### **468.37 Contracts.**

All agreements and contracts for work or materials in constructing the improvements of such district shall be in writing, signed by the chairperson of the board of supervisors for and on behalf of the district and the parties who are to perform the work or furnish the materials specified in such contract. Such contract shall specify the particular work to be done or materials to be furnished, the time when it shall begin and when it shall be completed, the amount to be paid and the times of payment, with such other terms and conditions as to details necessary to a clear understanding of the terms thereof.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.44 in 1989 Code to §468.37 in 1989 Code Supplement

### **468.38 Commissioners to classify and assess.**

When a levee or drainage district shall have been located and finally established or, unless otherwise provided by law, when the required proceedings have been taken to enlarge, deepen, widen, change, or extend any of the ditches, laterals, settling basins, or drains of such district, or the required proceedings have been had to annex additional lands to such district, or a plan of the United States government for original construction of the improvements in such district has been heretofore or hereafter adopted by such district under the provisions of sections 468.201 through 468.216, the board shall appoint three commissioners to assess benefits and classify the lands affected by such improvement. One of such commissioners shall be a competent civil engineer and two of them shall be resident freeholders of the county in which the district is located, but not living within, nor interested in any lands included in said district, nor related to any party whose land is affected thereby. The commissioners shall take and subscribe an oath of their qualifications and to perform the duties of classification of said lands, fix the percentages of benefits and apportion and assess the costs and expenses of constructing the said improvement according to law and their best judgment, skill, and ability. If said commissioners or any of them fail or neglect to act or perform the duties in the time and as required of them by law, the board shall appoint others with like qualifications to take their places and perform said duties.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.45 in 1989 Code to §468.38 in 1989 Code Supplement

### **468.39 Duties—time for performance—scale of benefits.**

At the time of appointing said commissioners, the board shall fix the time within which said assessment, classification, and apportionment shall be made, which may be extended for good cause shown. Within twenty days after their appointment, they shall begin to inspect and classify all the lands within said district, or any change, extension, enlargement, or relocation thereof in tracts of forty acres or less according to the legal or recognized subdivisions, in a graduated scale of benefits to be numbered according to the benefit to be received by each of such tracts from such improvement, and pursue said work continuously until completed and, when completed, shall make a full, accurate, and detailed report thereof and file the same with the auditor. The lands receiving the greatest benefit shall be marked on a scale of one hundred, and those benefited in a less degree with such percentage of one hundred as the benefits received bear in proportion thereto. They shall also make an equitable apportionment of the costs, expenses, fees, and damages computed on the basis of the percentages fixed.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.46 in 1989 Code to §468.39 in 1989 Code Supplement

### **468.40 Rules of classification.**

In the report of the appraisers so appointed they shall specify each tract of land by proper description, and the ownership thereof, as the same appears on the transfer books in the auditor's office.

In estimating the benefits as to the lands not traversed by said improvement, they shall not consider what benefits such land shall receive after some other improvements shall have been constructed, but only the benefits which will be received by reason of the construction of the improvement in question as it affords an outlet to the drainage of such lands, or brings an outlet nearer to said lands or relieves the same from overflow and relieves and protects the same from damage by erosion.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.47 in 1989 Code to §468.40 in 1989 Code Supplement

#### **468.41 Assessment for lateral ditches—reclassification of benefited lands.**

1. In fixing the percentages and assessments of benefits and apportionment of costs of construction to lands benefited by lateral ditches and drains as a part of the entire improvement to be made in a drainage district, the commissioners shall ascertain and fix the percentage of benefits and apportionment of costs to the lands benefited by such lateral ditches on the same basis and in the same manner as if said lateral was, with its sublaterals, being constructed as a subdistrict as provided in this subchapter, parts 1 through 5, reporting separately:

a. The percentage of benefits and amount accruing to each forty-acre tract or less on account of the construction of the main ditch, drain, or watercourse including pumping plant, if any.

b. The percentage of benefits and amount accruing to each forty-acre tract or less on account of the construction of such lateral improvement.

2. When there has been a repair or improvement to a lateral ditch or drain as provided in section 468.126 and the lands benefited by the lateral have not been classified as provided in this section, the board may order a classification of the lands and the commission shall ascertain and fix the percentage of benefits and apportionment of costs to the lands benefited by such lateral ditches or drains on the same basis and in the same manner as if the lateral was with its sublaterals being constructed as a subdistrict as provided in this subchapter, parts 1 through 5. When this procedure is followed for the classification of any lateral ditch or drain in a given district, the board shall follow the same procedure for all other lateral ditches or drains in the district which have not been classified as prescribed in this section.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.48 in 1989 Code to §468.41 in 1989 Code Supplement

#### **468.42 Railroad property—collection.**

The commissioners to assess benefits and make apportionment of costs and expenses shall determine and assess the benefits to the property of any railroad company extending into or through the levee or drainage district, and make return thereof showing the benefit and the apportionment of costs and expenses of construction. Such assessment when finally fixed by the board shall constitute a debt due from the railroad company to the district, and unless paid it may be collected by ordinary proceedings for the district in the name of the county in any court having jurisdiction. All other proceedings in relation to railroads, except as otherwise provided, shall be the same as provided for individual property owners within the levee or drainage district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.49 in 1989 Code to §468.42 in 1989 Code Supplement

#### **468.43 Public highways and state-owned lands.**

When any public highway or other public land extends into or through a levee or drainage district, the commissioners to assess benefits shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to such highway or other public land, and the board of supervisors shall assess the same against such highway and land.

Such assessments against primary highways and other state-owned lands under the jurisdiction of the state department of transportation shall be paid by the state department from the primary road fund on due certification of the amount by the county treasurer to the department, and against all secondary roads and other county owned lands under the jurisdiction of the board of supervisors, from county funds.

When any state-owned lands under the jurisdiction of the department of natural resources are situated within a levee or drainage district, the commissioners to

assess benefits shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to such lands and the board of supervisors shall assess the same against such lands. However, the commissioners shall not assess benefits to property below the ordinary high water mark in a sovereign state-owned lake, marsh or stream under the jurisdiction of the department of natural resources.

The assessments against lands under the jurisdiction of the department of natural resources shall be paid by the executive council upon certification of the amount by the county treasurer. There is appropriated from any funds in the general fund of the state not otherwise appropriated amounts sufficient to pay the certified assessments.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.50 in 1989 Code to §468.43 in 1989 Code Supplement

**468.44 Report of commissioners.**

The commissioners, within the time fixed or as extended, shall make and file in the auditor's office a written verified report in tabulated form as to each forty-acre tract, and each tract of less than forty acres, setting forth:

1. The names of the owners thereof as shown by the transfer books of the auditor's office or the reports of the engineer on file, showing said entire classification of lands in said district.

2. The amount of benefits to highway and railroad property and the percentage of benefits to each of said other tracts and the apportionment and amount of assessment of cost and expense, or estimated costs or expense, against each:

- a. For main ditches, and settling basins.
- b. For laterals.
- c. For levees and pumping station.
- d. For erosion protection and control or flood control.

3. The aggregate amount of all assessments.

4. Any specific benefits other than those derived from the drainage of agricultural lands shall be separately stated.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.51 in 1989 Code to §468.44 in 1989 Code Supplement

**468.45 Notice of hearing.**

The board shall fix a time for a hearing upon the report of the commissioners, and the auditor shall cause notice to be served upon each person whose name appears as owner, naming the person, and also upon the person or persons in actual occupancy of any tract of land without naming the person or persons, of the day and hour of such hearing, which notice shall be for the same time and served in the same manner as is provided for the establishment of a levee or drainage district, and shall state the amount of assessment of costs and expenses of construction apportioned to each owner upon each forty-acre tract or less, and that all objections thereto must be in writing and filed with the auditor at or before the time set for such hearing.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.52 in 1989 Code to §468.45 in 1989 Code Supplement

**468.46 Hearing and determination.**

At the time fixed or at an adjourned hearing, the board shall hear and determine all objections filed to said report and shall fully consider the said report, and may affirm, increase, or diminish the percentage of benefits or the apportionment of costs and expenses made in said report against any body or tract of land in said district as may appear to the board to be just and equitable.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.53 in 1989 Code to §468.46 in 1989 Code Supplement

**468.47 Evidence—conclusive presumption.**

At such hearing, the board may hear evidence both for and against the approval of said report or any portion thereof, but it shall not be competent to show that any of the lands in said district assessed for benefits or against which an apportionment of costs and expenses has been made will not be benefited by such improvement in some degree. Any interested party may be heard in argument in person or by counsel.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.54 in 1989 Code to §468.47 in 1989 Code Supplement

**468.48 Notice of increased assessment.**

The board shall cause notice to be served upon the owner of any tract of land or easement against which it is proposed to increase the assessment, requiring the owner to appear at a fixed date and show cause why such assessment should not be so increased. Such notice shall be served for the time and in the manner prescribed in section 468.15 or section 468.16, as the case may be, except that personal service in the same manner as an original notice may be made in lieu of the other methods.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.55 in 1989 Code to §468.48 in 1989 Code Supplement

**468.49 Classification as basis for future assessments.**

A classification of land for drainage, erosion or flood control purposes, when finally adopted, shall remain the basis of all future assessments for the purpose of said district unless revised by the board in the manner provided for reclassification, except that where land included in said classification has been destroyed, in whole or in part, by the erosion of a river, or where additional right of way has been subsequently taken for drainage purposes, said land which has been so eroded and carried away by the action of a river or which has been taken for additional right of way, may be removed by said board from said district as classified, without any reclassification, and no assessment shall thereafter be made on the land so removed. Any deficiency in assessment existing as the result of said action of the board shall be spread by it over the balance of lands remaining in said district in the same ratio as was fixed in the classification of the lands, payable at the next taxpaying period.

Except districts established by mutual agreement in accordance with section 468.142 in the event any forty-acre tract or less, or any lot, tract, or parcel, as set forth in the existing classification or reclassification of any drainage district now or hereafter established, is divided into two or more tracts, whether such division is by sale or condemnation or platted as a subdivision, the classification of the original tract shall be apportioned to the resulting parcels, regardless of use, except for land taken for additional drainage right of way. The classification of the original tract may be apportioned between the resulting parcels by agreement between the parties to such division. The parties shall file with the county auditor a written agreement setting forth the original description and the description of the tracts as subdivided and the percentage of the original classification apportioned to each. This agreement shall bear the signature of all of the parties to such subdivision. The agreement contemplated herein may be contained in the deed or other instrument effecting the division of the land, which agreement shall be binding upon the grantee or grantees by their acceptance of such instrument and their signatures shall not be necessary. The auditor shall enter this agreement in the drainage record and amend the current classification of the district in accordance with such agreement.

In the event the parties to such subdivision cannot agree as to the apportionment of the percentage classification, the board of supervisors shall, upon application of either party, appoint a commission having the qualifications of

commissioners, in accordance with section 468.38. The commissioners shall inspect the lands involved and apportion the existing classification of the original tract equitably and fairly to each of the several tracts as subdivided and shall make a full, accurate and detailed report thereof and file the same with the county auditor within the time set by the board. The report of the commissioners shall set forth the names of the owners thereof, the description of each of the tracts and the percentage of the original classification that each such tract shall bear (1) for main ditches and settling basins, (2) for laterals, (3) for levees and pumping station. Thereafter all the proceedings in relation thereto as to notice of hearing and fixing of percentage benefits shall be as in this subchapter, parts 1 through 5, provided in relation to original classification and assessments, and at such hearing, the board may affirm, increase or diminish the percentage of benefits so as to make them just and equitable, and cause the record of the existing classification, percentage of benefits or assessments, or both, to be modified accordingly. In the event the parties neither agree as to the apportionment of classification nor make application for the appointment of commissioners, then the auditor of the county in which the land is situated shall make such apportionment upon an equitable basis and enter the same of record as herein provided. No tract of land included within the boundary of any drainage district shall be exempt from drainage assessments or reassessments, except as herein provided.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.56 in 1989 Code to §468.49 in 1989 Code Supplement

#### **468.50 Levy—interest.**

When the board has finally determined the matter of assessments of benefits and apportionment, it shall levy the assessments as fixed by it upon the lands within the district, but an assessment on a tract, parcel or lot within the district which is computed at less than two dollars shall be fixed at the sum of two dollars. All assessments shall be levied at that time as a tax and shall bear interest at not to exceed the rate permitted by chapter 74A from that date, payable annually, except as provided as to cash payments within a specified time.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.57 in 1989 Code to §468.50 in 1989 Code Supplement

#### **468.51 Lien of tax.**

Such taxes shall be a lien upon all premises against which they are assessed as fully as taxes levied for state and county purposes.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.58 in 1989 Code to §468.51 in 1989 Code Supplement

#### **468.52 Levy for deficiency.**

If the first assessment made by the board for the original cost or for repairs of any improvement is insufficient, the board shall make an additional assessment and levy in the same ratio as the first for either purpose, payable at the next taxpaying period after such indebtedness is incurred subject, however, to the provisions of section 468.57. Any assessment made under this section on any tract, parcel or lot within the district which is computed at less than two dollars shall be fixed at the sum of two dollars.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.59 in 1989 Code to §468.52 in 1989 Code Supplement

#### **468.53 Record of drainage taxes.**

All drainage or levee tax assessments shall be entered in the drainage record of the district to which they apply, and also upon the tax records of each county.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.60 in 1989 Code to §468.53 in 1989 Code Supplement

**468.54 Funds—disbursement—interest.**

Such taxes when collected shall be kept in a separate fund known as the county drainage or levee fund and shall be paid out only for purposes properly connected with and growing out of the county drainage and levee districts on order of the board. The auditor shall continue to keep a record of each of the drainage and levee district's funds so as to accurately reflect the financial condition of each such district account. The treasurer, on order of the board of supervisors, shall invest such funds not immediately needed for current operating expenses in United States government bonds, in time certificates of deposit, in savings accounts in such banks as the board shall approve, in the interest bearing obligations of the drainage and levee districts of the county, or as provided by chapter 453. Interest collected by the treasurer on the funds so invested shall be deposited in the county drainage or levee fund, and on July 1 of each year the auditor shall apportion and credit such interest to each drainage or levee district account in the proportion which the average credit balance of each district bears to the average balance of the county drainage or levee fund. The averages to be ascertained shall be the averages of the balances existing on the first of each month during the fiscal year immediately preceding. Interest and penalties collected on drainage or levee district taxes shall be credited to the district for which the taxes are being collected. This section shall not be construed so as to permit expenditures in behalf of any district in excess of its share of the county drainage or levee fund. The provisions of this section shall not apply to drainage and levee districts under trustee management unless the trustees consent thereto, and in the absence of such consent, section 468.528 shall apply.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.61 in 1989 Code to §468.54 in 1989 Code Supplement

**468.55 Assessments—maturity and collection.**

All drainage or levee tax assessments shall become due and payable at the same time as other taxes, and shall be collected in the same manner with the same penalties for delinquency and the same manner of enforcing collection by tax sales.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.62 in 1989 Code to §468.55 in 1989 Code Supplement

**468.56 Payment of assessments.**

All assessments for benefits, as corrected and approved by the board, shall be levied at one time against the property benefited, and when levied and certified by the board, are payable at the office of the county treasurer. A person may pay the person's assessment in full without interest within thirty days after the levy of assessments, and before any improvement certificates or drainage bonds are issued for the assessment, and may pay a certificate at any time after issue, with accrued interest.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.63 in 1989 Code to §468.56 in 1989 Code Supplement

**468.57 Installment payments—waiver.**

If the owner of any land against which a levy exceeding one hundred dollars has been made and certified shall, within thirty days from the date of such levy, agree in writing endorsed upon any improvement certificate referred to in section 468.70, or in a separate agreement, that in consideration of having a right to pay the owner's assessment in installments, the owner will not make any objection as to the legality of the assessment for benefit, or the levy of the taxes against the property, then such owner shall have the following options:

1. To pay one-third of the amount of such assessment at the time of filing such agreement; one-third within twenty days after the engineer in charge shall certify to the auditor that the improvement is one-half completed; and the remaining

one-third within twenty days after the improvement has been completed and accepted by the board. All such installments shall be without interest if paid at said times, otherwise said assessments shall bear interest from the date of the levy at a rate not exceeding that permitted by chapter 74A, payable annually, and be collected as other taxes on real estate, with like penalty for delinquency.

2. To pay such assessments in not less than ten nor more than twenty equal installments, the number to be fixed by the board, and interest at the rate fixed by the board, not exceeding that permitted by chapter 74A. The first installment of each assessment, or the total amount if less than one hundred dollars, is due and payable on July 1 next succeeding the date of the levy, unless the assessment is filed with the county treasurer after May 31 in any year. The first installment shall bear interest on the whole unpaid assessment from the date of the levy as set by the board to the first day of December following the due date. The succeeding annual installments, with interest on the whole unpaid amount, to the first day of December following the due date, are respectively due on July 1 annually, and must be paid at the same time and in the same manner as the first semiannual payment of ordinary taxes. All future installments of an assessment may be paid on any date by payment of the then outstanding balance plus interest accrued to the date of payment. Each installment of an assessment with interest on the unpaid balance is delinquent after the thirtieth day of September next after its due date, and bears the same delinquent interest with the same penalties as ordinary taxes. When collected, the interest and penalties must be credited to the same drainage fund as the drainage special assessment.

The provisions of this section and of sections 468.58 through 468.61 may within the discretion of the board, also be made applicable to repairs and improvements made under the provisions of section 468.126.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.64 in 1989 Code to §468.57 in 1989 Code Supplement

**468.58 Installment payments after appeal.**

When an owner takes an appeal from the assessment against any of the owner's land, the option to pay in installments whatever assessment is finally established against such land in said appeal shall continue, if within twenty days after the final determination of said appeal the owner shall file in the office of the auditor the owner's written election to pay in installments, and within said period pay such installments as would have matured prior to that time if no appeal had been taken, together with all accrued interest on said assessment to the last preceding interest-paying date.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.65 in 1989 Code to §468.58 in 1989 Code Supplement

**468.59 Notice of half and full completion.**

Within two days after the engineer has filed a certificate that the work is half completed and within two days after the board of supervisors has accepted the completed improvement as in this subchapter, parts 1 through 5, provided, the county auditor shall notify the owner of each lot or parcel of land who has signed an agreement of waiver as provided in section 468.57, of such fact. Such notice shall be given by certified mail sent to such owners, respectively, at the addresses filed with the auditor at the time of making such agreement of waiver.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.66 in 1989 Code to §468.59 in 1989 Code Supplement

**468.60 Lien of deferred installments.**

No deferred installment of the amount assessed as between vendor and vendee, mortgagor and mortgagee shall become a lien upon the property against which it

is assessed and levied until June 30 of the preceding fiscal year in which it is due and payable.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.67 in 1989 Code to §468.60 in 1989 Code Supplement

#### **468.61 Surplus funds—application of.**

When one-half or more of all assessments for a drainage or levee district have been paid and it is ascertained that there will be a surplus in the district fund after all assessments have been paid, the board may refund to the owner of each tract of land, not more than fifty percent of the owner's proportionate part of such surplus. When all construction work has been completed and all cost paid, and all assessments have been paid in full, the board may refund, to the owner of each tract of land, the owner's proportionate part of any surplus funds except such portion of the surplus as the board considers should be retained for a sinking fund to pay future maintenance and repair costs.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.68 in 1989 Code to §468.61 in 1989 Code Supplement

#### **468.62 Change of conditions—modification of plan.**

If, after the improvement has been finally located and before construction thereof has been completed, there has been a change of conditions of such nature that the plan of improvement as adopted should be modified or amended, the board may direct the engineer appointed under section 468.30 or another engineer, to make a report showing such changes or modifications of the plan of improvement as may be necessary to meet the change of conditions. Upon the filing of such report, the board shall have jurisdiction to adopt said modified or amended plan of improvement or may further modify or amend and adopt the same by following the procedure provided in sections 468.201, 468.205 through 468.209 so far as same are applicable, except that awards for damages shall not be canceled where there has been no change made in the improvement which would increase or decrease the damages awarded. However, modifications and changes may be made in the plan on which hearing was held without further notice or hearing, provided the same do not increase or decrease the estimated cost to the district by more than twenty-five percent.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.69 in 1989 Code to §468.62 in 1989 Code Supplement

#### **468.63 Drainage subdistrict.**

After the establishment of a drainage district, a person owning land within the district which has been assessed for benefits, but which is separated from the main ditch, drain, or watercourse for which it has been so assessed, by the land of others, who desires a ditch or drain constructed from the person's land across the land of the others in order to connect with the main ditch, drain, or watercourse, and is unable to agree with the intervening owners on the terms and conditions on which the person may enter upon their lands and cause to be constructed the connecting drain or ditch, may file a petition for the establishment of a subdistrict and shall give notice of the filing of the petition to each person whose land may be included in the subdistrict or may be assessed in the subdistrict in the manner provided by sections 468.14 through 468.18 for the notice of the hearing and have proofs on file before the appointment of the engineer, if one is appointed. Thereafter, the proceedings shall be the same as provided for the establishment of an original district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.70 in 1989 Code to §468.63 in 1989 Code Supplement

#### **468.64 Presumption—jurisdiction.**

Such connecting ditch or drain which a person shall cause to be constructed shall be presumed conducive to the public health, welfare, convenience, and

utility the same as if it had been so constructed as a part of the original improvement of said district. When such subdistrict has been established and constructed it shall become and be a part of the improvement of such drainage district as a whole and be under the control and supervision of the board to the same extent and in every way as if it had been a part of the original improvement of such district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.71 in 1989 Code to §468.64 in 1989 Code Supplement

#### **468.65 Reclassification.**

When, after a drainage or levee district has been established, except districts established by mutual agreement in accordance with section 468.142, and the improvements thereof constructed and put in operation, there has been a material change as to lands occupied by highway or railroad right of way or in the character of the lands benefited by the improvement, or when a repair, improvement, or extension has become necessary, the board may consider whether the existing assessments are equitable as a basis for payment of the expense of maintaining the district and of making the repair, improvement or extension. If they find the same to be inequitable in any particular, they shall by resolution express such finding, appoint three commissioners possessing the qualifications prescribed in section 468.38 and order a reclassification as follows:

1. If they find the assessments to be generally inequitable they shall order a reclassification of all property subject to assessment, such as lands, highways, and railroads in said district.

2. If the inequity ascertained by the board is limited to the proportion paid by highways or railroads, a general reclassification of all lands shall not be necessary but the commissioners may evaluate and determine the fair proportion to be paid by such highways or railroads or both as provided in sections 468.42 and 468.43.

3. Any benefits of a character for which levee or drainage districts may be established and which are attributable to or enhanced by the improvement or by the repair, improvement, or extension thereof, shall be a proper subject of consideration in a reclassification notwithstanding the district may have been originally established for a limited purpose.

4. If after a district has been reclassified, the board in its judgment concludes there were errors in the reclassification or there is an inequitable assessment of benefits, the board may on its own motion, after notice to the landowners involved as provided in sections 468.14 through 468.18 and by resolution, order the district or any portion of the district to again be reclassified as prescribed in this section and in section 468.67.

Such reclassification when finally adopted shall remain the basis for all future assessments unless revised as provided in this subchapter, parts 1 through 5.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.72 in 1989 Code to §468.65 in 1989 Code Supplement

#### **468.66 Bids required.**

In case the board shall finally determine that any such changes as defined in section 468.62 shall be made involving an expenditure of five thousand dollars or more, said work shall be let by bids in the same manner as is provided for the original construction of such improvements.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.73 in 1989 Code to §468.66 in 1989 Code Supplement

#### **468.67 Procedure governing reclassification.**

The proceedings for such reclassification shall in all particulars be governed by the same rules as for original classification. The commissioners shall fix the percentage of actual benefits and make an equitable apportionment of the costs and expenses of such repairs, improvements or extensions and file a report thereof

with the auditor in the same form and manner as for original classification. Thereafter, all the proceedings in relation thereto as to notice, hearing, and fixing of percentage of benefits and amount of assessments shall be as in this subchapter, parts 1 through 5, provided in relation to original classification and assessments, and at such hearing the board may affirm, increase, or diminish the percentage and assessment of benefits and apportionment of costs and expenses so as to make them just and equitable, and cause the record of the original classification, percentage of benefits, and assessments to be modified accordingly.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.74 in 1989 Code to §468.67 in 1989 Code Supplement

#### **468.68 Drainage warrants received for assessments.**

Warrants drawn upon the construction or maintenance funds of any district for which an assessment has been or must be levied, shall be transferable by endorsement, and may be acquired by any taxpayer of such district and applied at their accrued face value upon the assessment levied to create the fund against which the warrant was drawn; when the amount of the warrant exceeds the amount of the assessment, the treasurer shall cancel the said warrant, and give the holder thereof a certificate for the amount of such excess, which certificate shall be filed with the auditor, who shall issue a warrant for the amount of such excess, and charge the treasurer therewith. Such certificate is transferable by endorsement, and will entitle the holder to the new warrant, made payable to the holder's order, and bearing the original number, preceded by the words, "Issued as unpaid balance due on warrant number ....."

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.75 in 1989 Code to §468.68 in 1989 Code Supplement

#### **468.69 Bonds received for assessments.**

Bonds issued for the cost of construction, maintenance or repair of any drainage or levee district, or for the refunding of any obligation of such district, may be acquired by any taxpayer or group of taxpayers of such district, and applied at their face value in the order of their priority, if any priority exists between bonds of the same issue, upon the payment of the delinquent and/or future assessments levied against the property of such taxpayers to pay off the bonds so acquired; the interest coupons attached to such bonds, may likewise be applied at their face value to the payment of assessments for interest accounts, delinquent or future.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.76 in 1989 Code to §468.69 in 1989 Code Supplement

#### **468.70 Installment assessments—interest-bearing warrants—improvement certificates.**

The board may provide by resolution for the payment of assessments in not more than twenty annual installments with interest at a rate not exceeding that permitted by chapter 74A. The board may issue warrants bearing interest at the same rate, which warrants shall be numbered and state a maturity date in which event they shall bear interest from the date of issuance without being presented for payment and marked unpaid for want of funds. The warrants may be sold by the board for cash in an amount not less than the face value thereof, together with accrued interest, if any.

The board may provide by resolution for the issuance of improvement certificates payable to bearer or to the contractors, naming them, who have constructed the said improvement or completed any part thereof, in payment or part payment of such work.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.77 in 1989 Code to §468.70 in 1989 Code Supplement

#### **468.71 Form, negotiability and effect.**

Each of such certificates shall state the amount of one or more drainage assessments or part thereof made against the property, designating it and the

owner thereof liable for the payment of such assessments. Said certificates shall be negotiable and transfer to the bearer all right and interest in and to the tax in every such assessment or part thereof described in such certificates, and shall authorize such bearer to collect and receive every assessment embraced in said certificate by or through any of the methods provided by law for their collection as the same mature.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.78 in 1989 Code to §468.71 in 1989 Code Supplement

#### **468.72 Interest—place of payment.**

Such certificates shall bear interest at a rate not exceeding that permitted by chapter 74A, payable annually, and shall be paid by the taxpayer to the county treasurer, who shall receipt for the same and cause the amount to be credited on the certificates issued therefor.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.79 in 1989 Code to §468.72 in 1989 Code Supplement

#### **468.73 Sale at par—right to pay.**

Any person shall have the right to pay the amount of the person's assessment represented by any outstanding improvement certificate, with the interest thereon to the date of such payment, at any time. No improvement certificate shall be issued or negotiated for the use of the drainage district for less than par value with accrued interest up to the delivery or transfer thereof. Every such certificate, when paid, shall be delivered to the treasurer and by the treasurer surrendered to the party to whose assessment it relates.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.80 in 1989 Code to §468.73 in 1989 Code Supplement

#### **468.74 Drainage bonds.**

When a drainage district has been established or the making of any subsequent repair or improvement determined upon, if the board of supervisors shall find that the cost of such improvement will create assessments against the land included therein greater than should be levied in a single year upon the lands benefited by such improvement, then, instead of issuing improvement certificates, as provided in sections 468.70 through 468.73 the board may fix the amount that shall be levied and collected each year until such cost and expenses are paid, and may issue drainage bonds of the county covering all assessments exclusive of assessments of one hundred dollars and less.

Before such bonds shall be issued, the governing body of the district shall cause an action for declaratory judgment to be brought in the district court of the county in which the bonds are to be issued, asking that their legality be confirmed. The court shall fix a date for hearing thereon and notice thereof shall be given to the owners of each lot or tract of land within the district, which shall be affected by an assessment to pay the proposed bonds, as shown by the transfer books in the auditor's office; also to the holders of liens of record upon said lands; and to all persons to whom it may concern without naming them specifically. Such notice shall be given by publication and by mailing for the same time in advance of hearing and in the same manner prescribed in section 468.15. After the entry of the declaratory judgment adjudicating the validity of such bonds, the approval of the district court shall be endorsed on the bonds before their issuance.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.81 in 1989 Code to §468.74 in 1989 Code Supplement

#### **468.75 Form.**

Each of such bonds shall be numbered and have printed upon its face that it is a "Drainage Bond", stating the county and number of the district for which it is issued, the date and maturity thereof, that it is in pursuance of a resolution of the board of supervisors, that it is to be paid only from taxes for levee and drainage

improvement purposes levied and collected on the lands assessed for benefits within the district for which the bond is issued.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §455.82 in 1989 Code to §468.75 in 1989 Code Supplement

#### **468.76 Amount—interest—maturity.**

In no case shall the aggregate amount of all bonds issued exceed the benefits assessed. The bonds shall not be issued for a greater amount than the aggregate amount of assessments for the payment of which they are issued, nor for a longer period of maturity than twenty years. The bonds shall bear interest at a rate not exceeding that permitted by chapter 74A, payable semiannually, on June 1 and December 1 of each year. The interest on unpaid assessments shall be at a rate not exceeding that permitted by chapter 74A.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §455.83 in 1989 Code to §468.76 in 1989 Code Supplement

#### **468.77 Maturity—interest—highway benefits.**

The board shall fix the amount, maturity, and interest of all bonds to be issued. It shall determine the amount of assessments to highways for benefits within the district to be covered by each bond issue. The taxes levied for benefits to highways and other public lands within any drainage or levee district shall be paid at the same times and in the same proportion as assessments against the lands of private owners.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §455.84 in 1989 Code to §468.77 in 1989 Code Supplement

#### **468.78 Sale or application at par—premium.**

Such bonds may be applied at par with accrued interest to the payment of work as it progresses upon the improvements of the district, or, the board may sell, through the county treasurer, said bonds at not less than par with accrued interest and devote the proceeds to such payment. Any premium derived from the sale of said bonds shall be credited to the drainage fund of the district.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §455.86 in 1989 Code to §468.78 in 1989 Code Supplement

#### **468.79 Deficiency levy—additional bonds.**

If any levy of assessments is not sufficient to meet the interest and principal of outstanding bonds, or if default shall occur by reason of nonpayment of assessments, additional assessments may be made on the same classification as the previous ones. Additional bond issues may be made when necessary to complete full payment for improvements, by the same proceedings as previous issues.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §455.87 in 1989 Code to §468.79 in 1989 Code Supplement

#### **468.80 Funding or refunding indebtedness.**

Drainage districts may settle, adjust, renew, or extend the time of payment of the legal indebtedness they may have, or any part thereof, in the sum of one thousand dollars or upwards, whether evidenced by bonds, warrants, certificates, or judgments, and may fund or refund the same and issue bonds therefor in the manner provided in section 468.367.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §455.88 in 1989 Code to §468.80 in 1989 Code Supplement

#### **468.81 Record of bonds.**

A record of the numbers, amounts, and maturities of all such bonds shall be kept by the auditor showing specifically the lands embraced in the district upon which the tax has not been previously paid in full.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §455.89 in 1989 Code to §468.81 in 1989 Code Supplement

**468.82 Payment.**

1. All assessments of twenty dollars and less shall be paid in cash.
2. The board at the time of making the levy, shall fix a time within which all assessments in excess of one hundred dollars may be paid in cash, and before any bonds are issued, publish notice in an official newspaper in the county where the district is located, of such time. After the expiration of such time, no assessments may be paid except in the manner and at the times fixed by the board in the resolution authorizing the issue of the bonds.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from \$455.90 and 455.91 in 1989 Code to §468.82 in 1989 Code Supplement

**468.83 Appeals.**

1. Any person aggrieved may appeal from any final action of the board in relation to any matter involving the person's rights, to the district court of the county in which the proceeding was held.
2. In districts extending into two or more counties, appeals from final orders resulting from the joint action of the several boards or the board of trustees of such district may be taken to the district court of any county into which the district extends.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from \$455.92 and 455.93 in 1989 Code to §468.83 in 1989 Code Supplement

**468.84 Time and manner.**

All appeals shall be taken within twenty days after the date of final action or order of the board from which such appeal is taken by filing with the auditor a notice of appeal, designating the court to which the appeal is taken and the order or action appealed from, and stating that the appeal will come on for hearing thirty days following perfection of the appeal with allowances of additional time for good cause shown. This notice shall be accompanied by an appeal bond with sureties to be approved by the auditor conditioned to pay all costs adjudged against the appellant and to abide the orders of the court.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from \$455.94 in 1989 Code to §468.84 in 1989 Code Supplement

**468.85 Transcript.**

When notice of any appeal with the bond as required by section 468.84 shall be filed with the auditor, the auditor shall forthwith make and certify a transcript of the notice of appeal and appeal bond, and file the same with the clerk.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from \$455.95 in 1989 Code to §468.85 in 1989 Code Supplement

**468.86 Petition—docket fee—waiver—dismissal.**

Within twenty days after perfection of the appeal the appellant shall file a petition setting forth the order or final action of the board appealed from and the grounds of the appellant's objections and the appellant's complaint, with a copy of the appellant's claim for damages or objections filed with the auditor. The appellant shall pay to the clerk the filing fee as provided by law in other cases. A failure to pay the filing fee or to file such petition shall be deemed a waiver of the appeal and in such case the court shall dismiss the same.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from \$455.96 in 1989 Code to §468.86 in 1989 Code Supplement

**468.87 Pleadings on appeal.**

It shall not be necessary for the appellees to file an answer to the petition unless some affirmative defense is made thereto, but they may do so.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from \$455.97 in 1989 Code to §468.87 in 1989 Code Supplement

**468.88 Proper parties—employment of counsel.**

In all actions or appeals affecting the district, the board of supervisors shall be a proper party for the purpose of representing the district and all interested parties therein, other than the adversary parties, and the employment of counsel by the board shall be for the purpose of protecting the rights of the district and interested parties therein other than the adversary parties.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.98 in 1989 Code to §468.88 in 1989 Code Supplement

**468.89 Plaintiffs and defendants.**

In all appeals or actions adversary to the district, the appellant or complaining party shall be entitled the plaintiff, and the board of supervisors and drainage district it represents, the defendants.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.99 in 1989 Code to §468.89 in 1989 Code Supplement

**468.90 Right of board and district to sue.**

In all appeals or actions for or in behalf of the district, the board and the drainage district it represents may sue as the plaintiffs.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.100 in 1989 Code to §468.90 in 1989 Code Supplement

**468.91 Trial on appeal—consolidation.**

Appeals from orders or actions of the board fixing the amount of compensation for lands taken for right of way or the amount of damages to which any claimant is entitled shall be tried as ordinary proceedings. All other appeals shall be triable in equity. The court may, in its discretion, order the consolidation for trial of two or more of such equitable cases.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.101 in 1989 Code to §468.91 in 1989 Code Supplement

**468.92 Conclusive presumption on appeal.**

On the trial of an appeal from the action of the board in fixing and assessing the amount of benefits to any land within the district as established, it shall not be competent to show that any lands assessed for benefits within said district as established are not benefited in some degree by the construction of the said improvement.

An exception to the conclusiveness of an assessment under this section shall be in those cases where it has been determined under section 468.188 that land has later been deprived of benefits received by a division of the district by some other improvement.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.102 in 1989 Code to §468.92 in 1989 Code Supplement

**468.93 Order as to damages—duty of clerk.**

If the appeal is from the action of the board as to the amount of damages or compensation awarded, the amount found by the court shall be entered of record, but no judgment shall be rendered therefor. The amount thus ascertained shall be certified by the clerk of said court to the board of supervisors who shall thereafter proceed as if such amount had been by it allowed to the claimant.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.103 in 1989 Code to §468.93 in 1989 Code Supplement

**468.94 Costs.**

Unless the result on the appeal is more favorable to the appellant than the action of the board, all costs of the appeal shall be taxed to the appellant, but if more favorable, the cost shall be taxed to the appellees.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.104 in 1989 Code to §468.94 in 1989 Code Supplement

### **468.95 Decree as to establishing district or including lands.**

On appeal from the action of the board in establishing or refusing to establish said district, or in including land within the district, the court may enter such order or decree as may be equitable and just in the premises, and the clerk of said court shall certify the decree or order to the board of supervisors which shall proceed thereafter in said matter as if such order had been made by the board. The taxation of costs among the litigants shall be in the discretion of the court.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.105 in 1989 Code to §468.95 in 1989 Code Supplement

### **468.96 Appeal as exclusive remedy—nonappellants.**

Upon appeal the decision of the court shall in no manner affect the rights or liabilities of any person who did not appeal. The remedy by appeal provided for in this subchapter, parts 1 through 5, shall be exclusive of all other remedies.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.106 in 1989 Code to §468.96 in 1989 Code Supplement

### **468.97 Reversal by court—rescission by board.**

In any case where the decree has been entered setting aside the establishment of a drainage district for errors in the proceedings, and such decree becomes final, the board shall rescind its order establishing the drainage district, assessing benefits, and levying the tax based thereon, and shall also cancel any contract made for construction work or material, and shall refund any and all assessments paid.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.107 in 1989 Code to §468.97 in 1989 Code Supplement

### **468.98 Setting aside establishment—procedure.**

After the court on appeal has entered a decree revising or modifying the action of the board, the board shall fix a new date for hearing, and proceed in all particulars in the manner provided for the original establishment of the district, avoiding the errors and irregularities for which the original establishment was set aside, and after a valid establishment thereof, proceed in all particulars as provided by law in relation to the original establishment of such districts.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.108 in 1989 Code to §468.98 in 1989 Code Supplement

### **468.99 Reassessment to cure illegality.**

Whenever any special assessment upon any lands within any drainage district shall have been adjudged to be void for any jurisdictional defect or for any illegality or uncertainty as to the terms of any contract and the improvement shall have been wholly completed, the board or boards of supervisors shall have power to remedy such illegality or uncertainty as to the terms of any such contract with the consent of the person with whom such contract shall have been entered into and make certain the terms of such contract and shall then cause a reassessment of such land to be made on an equitable basis with the other land in the district by taking the steps required by law in the making of an original assessment and relieving the tax in accordance with such assessment, and such tax shall have the same force and effect as though the board or boards of supervisors had jurisdiction in the first instance and no illegality or uncertainty existed in the contract.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.109 in 1989 Code to §468.99 in 1989 Code Supplement

### **468.100 Monthly estimate—payment.**

The supervising engineer shall, on or before the tenth day of each calendar month, furnish the contractor and file with the auditor estimates for work done during the preceding calendar month under the contract on each section, and the

auditor shall at once draw warrants in favor of such contractor on the drainage funds of the district or give the contractor an order directing the county treasurer to deliver to the contractor or contractors improvement certificates, or drainage bonds as the case may be, for ninety percent of the estimate on work done. Such monthly estimates shall remain on file in the office of the auditor as a part of the permanent records of the district to which they relate. Drainage warrants, bonds or improvement certificates when so issued shall be in such amounts as the auditor determines, not however, in amounts in excess of one thousand dollars.

All of the provisions of this section shall, when applicable, apply to repair work and improvement work in the same force and effect as to original construction.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.110 in 1989 Code to §468.100 in 1989 Code Supplement

#### **468.101 Completion of work—report—notice.**

When the work to be done under any contract is completed to the satisfaction of the engineer in charge of construction, the engineer shall so report and certify to the board, which shall fix a day to consider the report and shall give notice of the time and purpose of the meeting by ordinary mail to the landowners of the district and by publication in a newspaper of general circulation in the county, and the date fixed for considering the report shall be not less than ten days after the date of mailing.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.111 in 1989 Code to §468.101 in 1989 Code Supplement

#### **468.102 Objections.**

Any party interested in the said district or the improvement thereof may file objections to said report and submit any evidence tending to show said report should not be accepted. Any interested party having a claim for damages arising out of the construction of the improvement or repair shall file said claim with the board at or before the time fixed for hearing on the completion of the contract, which claim shall not include any claim for land taken for right of way or for severance of land.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.112 in 1989 Code to §468.102 in 1989 Code Supplement

#### **468.103 Final settlement—claims for damages.**

If it finds the work under any contract has been completed and accepted, the board shall compute the balance due, and if there are no liens on file against such balance, it shall enter of record an order directing the auditor to draw a warrant in favor of said contractor upon the levee or drainage fund of said district or give the contractor an order directing the county treasurer to deliver to the contractor improvement certificates or drainage bonds, as the case may be, for such balance found to be due, but such warrants, improvement certificates or bonds shall not be delivered to the contractor until the expiration of thirty days after the acceptance of the work.

If any claims for damages have been filed as provided in section 468.102, the board shall review said claims and determine said claims. If the determination by the board on any claim for damages results in a finding by the board that the damages resulting to the claimant were due to the negligence of the contractor, then the board shall provide for payment of said claim out of the remaining funds owing to the contractor. If the determination by the board results in a finding that the damages resulting to the claimant were not due to the negligence of the contractor but resulted from unavoidable necessity in the performance of the contract, then the board shall allow for payment of said claim in the amount fixed by the board out of the funds in said drainage district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.113 in 1989 Code to §468.103 in 1989 Code Supplement

**468.104 Abandonment of work.**

In case any contractor abandons or fails to proceed diligently and properly with the work before completion, or in case the contractor fails to complete the same in the time and according to the terms of the contract, the board shall make written demand on the contractor and the contractor's surety to proceed with the work within ten days. Service of said demand may be personal, or by certified mail addressed to the contractor and the surety, respectively, at their places of residence or business, as shown by the records in the auditor's office.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.114 in 1989 Code to §468.104 in 1989 Code Supplement

**468.105 New contract—suit on bond.**

Unless the contractor or the surety on the contractor's bond shall appear and in good faith proceed to comply with the demand, and resume work under the contract within the time fixed, the board shall proceed to let contracts for the unfinished work in the same manner as original contracts, and apply all funds not paid to the original contractor toward the completion of the work, and if not sufficient for such purpose, may cause suit to be brought upon the bond of the defaulting contractor for the benefit of the district, and the amount of recovery thereon shall be credited to the district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.115 in 1989 Code to §468.105 in 1989 Code Supplement

**468.106 Construction on or along highway.**

When a levee or drainage district shall have been established by the board and it shall become necessary or desirable that the levee, ditch, drain, or improvement shall be located and constructed within the limits of any public highway, it shall be so built as not materially to interfere with the public travel thereon.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.116 in 1989 Code to §468.106 in 1989 Code Supplement

**468.107 Establishment of highways.**

The board shall have power to establish public highways along and upon any levee or embankment along any such ditch or drain, but when so established the same shall be worked and maintained as other highways and so as not to obstruct or impair the levee, ditch, or drain.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.117 in 1989 Code to §468.107 in 1989 Code Supplement

**468.108 Bridges.**

When a levee, ditch, drain, or change of any natural watercourse crosses a public highway, necessitating moving or building or rebuilding any secondary road bridge upon, or ditch or drain crossing the road, the board of supervisors shall move, build, or rebuild it, paying the costs and expenses, including construction, maintenance, repair and improvement costs, from county funds.

If the bridge or crossing be upon or across a primary or interstate road, the work aforesaid shall be done by the state department of transportation and paid for out of the primary road fund.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.118 in 1989 Code to §468.108 in 1989 Code Supplement

**468.109 Construction across railroad.**

Whenever the board of supervisors shall have established any levee, or drainage district, or change of any natural watercourse and the levee, ditch, drain, or watercourse as surveyed and located crosses the right of way of any railroad company, the county auditor shall immediately cause to be served upon such railroad company, in the manner provided for the service of original notices, a notice in writing stating the nature of the improvement to be constructed, the

place where it will cross the right of way of such company, and the full requirements for its complete construction across such right of way as shown by the plans, specifications, plat, and profile of the engineer appointed by the board, and directing such company to construct such improvement according to said plans and specifications at the place designated, across its right of way, and to build and construct or rebuild and reconstruct the necessary culvert or bridge where any ditch, drain, or watercourse crosses its right of way, so as not to obstruct, impede, or interfere with the free flow of the water therein, within thirty days from the time of the service of such notice upon it.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.119 in 1989 Code to §468.109 in 1989 Code Supplement

#### **468.110 Duty to construct.**

Upon receiving the notice provided in section 468.109, such railroad company shall construct the improvement across its right of way according to the plans and specifications prepared by the engineer for said district, and build or rebuild the necessary culvert or bridge and complete the same within the time specified.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.120 in 1989 Code to §468.110 in 1989 Code Supplement

#### **468.111 Bridges at natural waterway—costs.**

The cost of building, rebuilding, constructing, reconstructing, changing, or repairing, as the case may be, any culvert or bridge, when such improvement is located at the place of the natural waterway or place provided by the railroad company for the flow of the water, shall be borne by such railroad company without reimbursement therefor.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.121 in 1989 Code to §468.111 in 1989 Code Supplement

#### **468.112 Construction when company refuses.**

If the railroad company shall fail, neglect, or refuse to comply with said notice, the board shall cause the same to be done under the supervision of the engineer in charge of the improvement, and such railroad company shall be liable for the cost thereof to be collected by the county for said district in any court having jurisdiction.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.122 in 1989 Code to §468.112 in 1989 Code Supplement

#### **468.113 Cost of construction across railway.**

The cost of constructing the improvement across the right of way of such company, not including the cost of building or rebuilding and constructing or reconstructing any necessary culvert or bridge, when such improvement is located at the place of the natural waterway or place provided by the railroad company for the flow of the water, shall be considered as an element of such company's damages by the appraiser to appraise damages.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.123 in 1989 Code to §468.113 in 1989 Code Supplement

#### **468.114 Passing drainage equipment across railway.**

It shall be the duty of any steam or electric railway company to furnish the contractor unrestricted passage across its right of way, telegraph, telephone, and signal lines for the contractor's machines and equipment, whenever recommended by the engineer and approved by the board of supervisors, and the cost thereof shall be considered as an element of such company's damages by the appraisers thereof; provided that if such company shall fail to do so within thirty days after written notice from the auditor, the engineer shall cause the same to be done under the engineer's direction and the company shall be liable for the cost thereof to be collected by the county in any court having jurisdiction. Provided,

further, that the railway company shall have the right to designate the day and hours thereof within said period of thirty days above mentioned when such crossing shall be made.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.124 in 1989 Code to §468.114 in 1989 Code Supplement

**468.115 Passage across other public utilities.**

The owner or operator of a public utility, whether operated publicly or privately other than steam and electric railways shall afford the contractor of any drainage project under this subchapter, parts 1 through 5, unrestricted passage for the contractor's machines and equipment across the right of way lines or other equipment of such utility whenever recommended by the engineer and approved by the board of supervisors.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.125 in 1989 Code to §468.115 in 1989 Code Supplement

**468.116 Failure to comply.**

If the owner or operator of the utility fails to afford such passage within fifteen days after written notice from the drainage engineer so to do, the contractor, under the supervision of the engineer, may proceed to do the necessary work to afford such passage and to place said utility in the same condition as before said passage; but the owner or operator shall have the right to designate the hours of the day when such crossing or passage shall be made.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.126 in 1989 Code to §468.116 in 1989 Code Supplement

**468.117 Expenses attending passage.**

The work necessary to afford such passage shall be deemed to be covered by and included in the contract with the district under which the contractor is operating, and if the work is done by the owner or operator of such utility the reasonable expense thereof shall be paid out of the drainage funds of the district and charged to the account of the contractor.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.127 in 1989 Code to §468.117 in 1989 Code Supplement

**468.118 Abandoned right-of-way.**

If a railroad or other utility has abandoned the use of its right-of-way for the purpose it was originally acquired or has sold its right-of-way to a person who will use it for a purpose other than for which it was originally acquired, the prior right or privilege of the drainage district to pass through the right-of-way of the railroad or utility shall become a permanent easement in favor of the drainage district for drainage purposes including the right of ingress and egress through adjacent property and the right of access for maintenance, repair, improvement and inspection. The permanent easement has the same dimensions as originally specified in the engineer's report and survey, or as acquired by use or as subsequently acquired.

If a railroad or other utility has abandoned the use of its right-of-way for the purpose it was originally acquired or has sold its right-of-way to a person who will use it for a purpose other than for which it was originally acquired in segments, each segment shall be assessed for benefits in the same proportion as the area of the segment bears to the area of the right-of-way through the forty-acre tract.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.127A in 1989 Code to §468.118 in 1989 Code Supplement

**468.119 Annexation of additional lands.**

After the establishment of a levee or drainage district, if the board becomes convinced that additional lands contiguous to the district, and without regard to county boundaries, are benefited by the improvement or that the same are then

receiving benefit or will be benefited by a repair or improvement to said district as contemplated in section 468.126, it may adopt, with or without a petition from owners of the proposed annexed lands, a resolution of necessity for the annexation of such additional land and appoint an engineer with the qualifications provided in this subchapter, parts 1 through 5, to examine such additional lands, to make a survey and plat thereof showing their relation, elevation, and condition of drainage with reference to such established district, and to make and file with the auditor a report as in this subchapter, parts 1 through 5, provided for the original establishment of such district, said report to specify the character of the benefits received.

In the event the additional lands are a part of an existing drainage district, as an alternative procedure to that established by the foregoing provisions of this section, the lands may be annexed in either of the following methods:

1. A petition, proposing that the lands be included in a contiguous drainage district and signed by at least twenty percent of the landowners of those lands to be annexed, shall be filed with the governing board of each affected district.

The board of the district in which the lands are presently included may, at its next regular meeting or at a special meeting called for that purpose, adopt a resolution approving and consenting to the annexation; or

2. Whenever the owners of all of the land proposed to be annexed file a petition with the governing boards of the affected districts, the consent of the board in which the lands are then located shall not be required to consent to the annexation, and the board of the annexing district may proceed as provided in this section.

3. If either method of annexation provided for in subsections 1 and 2 of this section is completed, the board of the district to which the lands are to be annexed may adopt a resolution of necessity for the annexation of the additional lands, as provided in this section.

The right of remonstrance, as provided under section 468.28, does not apply to the owners of lands being involuntarily annexed to an established district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.128 in 1989 Code to §468.119 in 1989 Code Supplement

#### **468.120 Proceedings on report.**

If the report recommends the annexation of the lands or any portion of them, the board shall consider the report, plats, and profiles and if satisfied that any of the lands are materially benefited by the district and that annexation is feasible, expedient, and for the public good, it shall proceed in all respects as to notice, hearing, appointment of appraisers to fix damages and as to hearing on the annexation; and if the annexation is finally made, as to classification and assessment of benefits to the annexed lands only, to the same extent and in the same manner as provided in the establishment of an original district. However, the annexation and classification of the annexed lands for benefits may be determined at one hearing. Those parties having an interest in the lands proposed to be annexed have the right to receive notice, to make objections, to file claims for damages, to have hearing, to take appeals and to do all other things to the same extent and in the same manner as provided in the establishment of an original district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.129 in 1989 Code to §468.120 in 1989 Code Supplement

#### **468.121 Levy on annexed lands.**

After annexation is made the board may levy upon the annexed lands an assessment sufficient to equal the assessments for benefit originally paid by the lands of equal classification if the finding by the board as provided by section 468.119 was that the lands should have been included in the district when

originally established, plus their proportionate share of the costs of any enlargement or extension of drains required to serve the annexed lands. If the finding of the board as provided in section 468.119 was based on the fact that additional lands are now benefited by virtue of the repair, improvement, or the change of the topographical conditions made to the district and were not benefited by the district as originally established, then the board shall levy upon the annexed lands an assessment sufficient to pay their proportionate share of the costs of the repair or improvement which was the basis for the lands being annexed. If the board finds that the lands are presently receiving benefits from the district but that some were reasonably omitted from the original establishment because of the change of the topographical conditions, the assessments levied upon the annexed lands shall be limited to a proportionate share of the costs of current and future maintenance, repairs and improvements.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.130 in 1989 Code to §468.121 in 1989 Code Supplement

#### **468.122 Use of former and abandoned surveys.**

In cases where proceedings have been taken for the establishment of a levee or drainage district and an engineer has been appointed who has made a survey, return, and plat thereof and for any reason the improvement has been abandoned and the proceedings dismissed, and afterward proceedings are instituted for the establishment of a levee or drainage district which will benefit any territory surveyed in said former proceedings, the engineer shall use so much of the return, levels, surveys, plat, and profile made in the former proceedings as may be applicable. The engineer shall specify in the engineer's reports the parts thereof so used, and in case the cost of said returns, levels, surveys, plat, and profile made in said former proceedings has been paid by the former petitioners or their sureties, then a reasonable amount shall be allowed said petitioners or sureties for the use of the same.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.131 in 1989 Code to §468.122 in 1989 Code Supplement

#### **468.123 Unsuccessful procedure—re-establishment.**

When proceedings have been instituted for the establishment of a drainage district or for any change or repair thereof, or the change of a natural watercourse, and the establishment thereof has failed for any reason either before or after the improvement is completed, the board shall have power to re-establish such district or improvement and any new improvement in connection therewith as recommended by the report of the engineer. As to all lands benefited by such re-establishment, repair, or improvement, the board shall proceed in the same manner as in the establishment of an original district, using as a basis for assessment the entire cost of the proceedings, improvement, and maintenance from the beginning; but in awarding damages and in the assessment of benefits account shall be taken of the amount of damages and taxes, if any, theretofore paid by those benefited, and credit therefor given accordingly. All other proceedings shall be the same as for the original establishment of the district, making of improvements, and assessment of benefits.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.132 in 1989 Code to §468.123 in 1989 Code Supplement

#### **468.124 New district including old district.**

If any levee or drainage district or improvement established either by legal proceedings or by private parties shall be insufficient to properly drain all of the lands tributary thereto, the board upon petition as for the establishment of an original levee or drainage district, shall have power to establish a new district covering and including such old district or improvement together with any

additional lands deemed necessary. All outstanding indebtedness of the old levee or drainage district shall be assessed only against the lands included therein.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.133 in 1989 Code to §468.124 in 1989 Code Supplement

#### **468.125 Credit for old improvement.**

When such district as contemplated in section 468.124 and the new improvement therein shall include the whole or any part of the former improvement, the commissioners, for classification of lands for assessment of benefits and apportionment of costs and expenses of such new improvement, shall take into consideration the value of such old improvement in the construction of the new one and allow proper credit therefor to the parties owning the old improvement as their interests may appear. In all other respects the same proceedings shall obtain as are provided for the original establishment of levee and drainage districts.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.134 in 1989 Code to §468.125 in 1989 Code Supplement

#### **468.126 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 468.14 through 468.18. 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 subchapter, parts 1 through 5.

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 468.14 through 468.18. 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 468.38. 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 subchapter, parts 1 through 5. However, this section does not affect the procedures of section 468.132 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 subchapter, parts 1 through 5, 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 468.83 through 468.98.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.135 in 1989 Code to §468.126 in 1989 Code Supplement

#### **468.127 Payment.**

The costs of the repair or improvements provided for in section 468.126 shall be paid for out of the funds of the levee or drainage district. If the funds on hand are not sufficient to pay such expenses, the board within two years shall levy an assessment sufficient to pay the outstanding indebtedness and leave the balance which the board determines is desirable as a sinking fund to pay maintenance and repair expenses. Any assessment made under this section on any tract, parcel or lot within the district which is computed at less than two dollars shall be fixed at the sum of two dollars.

If the board deems that the costs of the repairs or improvements will create assessments against the lands in the district greater than should be borne in one

year, it may levy the same at one time and provide for the payment of said costs and assessments in the manner provided in sections 468.57 through 468.61; provided that assessments may be collected in less than ten installments as the board may determine.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.136 in 1989 Code to §468.127 in 1989 Code Supplement

**468.128 Impounding areas and erosion control devices.**

Levee and drainage districts are empowered to construct impounding areas and other flood and erosion control devices to protect lands of the district and drainage structures and may provide ways for access to improvements for the operation or protection thereof, where the cost is not excessive in consideration of the value to the district. Necessary lands or easements may be acquired within or without the district by purchase, lease or agreement, or by exercise of the right of eminent domain and may be procured and construction undertaken either independently or in co-operation with other districts, individuals, or any federal or state agency or political subdivision.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.137 in 1989 Code to §468.128 in 1989 Code Supplement

**468.129 Revenues used for operation, maintenance and construction.**

Levee and drainage districts may realize income from incidental uses of their improvements and rights of way which are not injurious to same or incompatible with the purposes of the district. Revenues derived therefrom may be expended for operating, maintenance or construction costs of the district as its governing body may elect.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.138 in 1989 Code to §468.129 in 1989 Code Supplement

**468.130 City may discharge treated sewage.**

Any board, as defined in section 455.4, may by contract permit any city to discharge adequately treated sewage into drainage ditches. The contract shall fix the rental, make provision for termination, and shall provide that no nuisance shall be created.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.139 in 1989 Code to §468.130 in 1989 Code Supplement

**468.131 Reclassification required.**

When an assessment for improvements as provided in section 468.126, exceeds twenty-five percent of the original assessment and the original or subsequent assessment or report of the benefit commission as confirmed did not designate separately the amount each tract should pay for the main ditch and tile lateral drains then the board shall order a reclassification in accordance with the principles and rules set forth in section 468.41.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.141 in 1989 Code to §468.131 in 1989 Code Supplement

**468.132 Improvement of common outlet—notice of hearing.**

When two or more drainage districts outlet into the same ditch, drain, or natural watercourse and the board determines that it is necessary to clean out, deepen, enlarge, extend, or straighten said ditch, drain, or natural watercourse in order to expeditiously carry off the combined waters of such districts, the board may proceed as provided in section 468.126. After said board has decided that such work should be done, it shall fix a date for hearing on its decision, and it shall give two weeks' notice thereof by certified mail to the auditor of the county wherein the land to be assessed for such work is located, and said county auditor shall thereupon immediately notify by certified mail the board or boards of trustees of the districts having supervision thereof, as to said hearing on said contemplated

work. In those instances where two or more districts involved are under the supervision of the same board, or joint board if the district is intercounty, the notice shall be given to all landowners affected as prescribed for in sections 468.14 through 468.18. Each district shall be assessed for the cost of such work in proportion to the benefits derived. Common outlet for the purpose of this section shall mean an outlet where two adjacent districts have an outlet common to both of said districts and which districts are also contiguous, one to the other.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.142 in 1989 Code to §468.132 in 1989 Code Supplement

#### **468.133 Commissioners to apportion benefits—interest prohibited.**

For the purpose of ascertaining the proportionate benefits, the board shall appoint commissioners having the qualifications of benefit commissioners, one of whom shall be an engineer. Such commissioners appointed shall not be residents of any of the districts affected, nor shall any member thereof have any interest in land in any districts affected by the contemplated work. Such commission shall determine the percentage of benefits and the sum total to be assessed to each district for the improvement.

In the event that one of the districts to be assessed under this statute shall have any improvement such as a settling basin which reduces the quality and quantity of flow or sediment, such commission may give consideration to the existence of such an improvement when they determine the percentage of benefits and the sum total to be assessed to each district for the improvement.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.143 in 1989 Code to §468.133 in 1989 Code Supplement

#### **468.134 Time of report—notice of hearing.**

When said commissioners are appointed, the board shall, by proper order, fix the time when the commissioners shall report their findings, but a report filed within thirty days of the time so fixed shall be deemed a compliance with said order. On the filing of said report, the board shall fix a time for hearing thereon, and it shall give notice thereof to the auditor of the county in which the land to be assessed for such work is located by certified mail; said county auditor shall thereupon immediately notify by certified mail the board of supervisors, and board or boards of trustees of the districts having supervision thereof, as to said hearing on said commissioner's report. In those instances where two or more districts are under the supervision of the same board, or joint board if the district is intercounty, the notice shall be given to all landowners affected as prescribed in sections 468.14 through 468.18.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.144 in 1989 Code to §468.134 in 1989 Code Supplement

#### **468.135 Report and review—appeal.**

The commissioners shall file with the board a detailed report of their findings. Said board shall review said report and may, by proper order, increase or decrease the amount which shall be charged to each district. After the final order of the board herein has been made, said board shall notify the county auditor, in the time and manner as provided in sections 468.133 and 468.134, of said order, and said county auditor shall notify by certified mail the board of supervisors, and said board or boards of trustees, of said final order. Said board of supervisors and said board or boards of trustees, if aggrieved by said final order, may appeal therefrom to the district court of the county in which any of the improvement proposed or done is located.

Any such appeal shall be taken, perfected and conducted in the time and manner provided in section 468.83, subsection 1, and sections 468.84 through 468.88, for appeals contemplated by said sections.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.145 in 1989 Code to §468.135 in 1989 Code Supplement

#### **468.136 Levy under original classification.**

If the amount finally charged against a district does not exceed twenty-five percent of the original cost of the improvement in said district, the board shall proceed to levy said amount against all lands, highways, and railway rights of way and property within the district, in accordance with the original classification and apportionment. Any assessment made under this section on any tract, parcel or lot within the district which is computed at less than two dollars shall be fixed at the sum of two dollars.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.146 in 1989 Code to §468.136 in 1989 Code Supplement

#### **468.137 Levy under reclassification.**

If the amount finally charged against a district exceeds twenty-five percent of the original cost of the improvement, the board may order a reclassification as provided for the original classification of a district and upon the final adoption of the new classification and apportionment shall proceed to levy that amount upon all lands, highways, and railway rights of way and property within the district, in accordance with the new classification and apportionment. An assessment made under this section on a tract, parcel or lot within the district which is computed at less than two dollars shall be fixed at the sum of two dollars.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.147 in 1989 Code to §468.137 in 1989 Code Supplement

#### **468.138 Removal of obstructions.**

The board shall cause to be removed from the ditches, drains, and laterals of any district any obstructions which interfere with the flow of the water, including trees, hedges, or shrubbery and the roots thereof, and may cause any tile drain so obstructed to be relaid in concrete or any other adequate protection, such work to be paid for from the drainage funds of the district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.148 in 1989 Code to §468.138 in 1989 Code Supplement

#### **468.139 Trees and hedges.**

When it becomes necessary to destroy any trees or hedges outside the right of way of any ditch, lateral, or drain in order to prevent obstruction by the roots thereof, if the board and the owners of such trees or hedges cannot agree upon the damage for the destruction thereof, the board may proceed to acquire the right to destroy and remove such trees or hedges by the same proceedings provided for acquiring right of way for said drainage improvement in the first instance.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.149 in 1989 Code to §468.139 in 1989 Code Supplement

#### **468.140 Outlet for lateral drains—specifications.**

The owner of any premises assessed for the payment of the costs of location and construction of any ditch, drain, or watercourse as in this subchapter, parts 1 through 5, provided, shall have the right to use the same as an outlet for lateral drains from the premises. The board of supervisors shall make specifications covering the manner in which such lateral drains shall be connected with the main ditches or other laterals and be maintained, and the owner shall follow such specifications in making and maintaining any such connection.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.150 in 1989 Code to §468.140 in 1989 Code Supplement

#### 468.141 Subdistricts in intercounty districts.

The board of supervisors of any county shall have jurisdiction to establish subdrainage districts of lands included within a district extending into two or more counties when the lands to compose such subdistricts lie wholly within such county, and to make improvements therein, repair and maintain the same, fix and levy assessments for the payment thereof, and the provisions of this section shall apply to all such drainage subdistricts, the lands of which lie wholly within one county. The proceedings for all such purposes shall be the same as for the establishment, construction, and maintenance of an original levee or drainage district the lands of which lie wholly within one county, so far as applicable, except that one or more persons may petition for a subdistrict as provided in section 468.63.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.151 in 1989 Code to §468.141 in 1989 Code Supplement

#### 468.142 District by mutual agreement—presumption.

The owners of lands may provide by mutual agreement in writing duly signed, acknowledged, and filed with the auditor for combined drainage of their lands by the location and establishment of a drainage district for such purposes and the construction of drains, ditches, settling basins, and watercourses upon and through their said lands. Such drainage district shall be presumed to be conducive to the public welfare, health, convenience, or utility.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.152 in 1989 Code to §468.142 in 1989 Code Supplement

#### 468.143 What the agreement shall contain.

Such agreements shall contain the following:

1. A description of the lands by congressional divisions, metes and bounds, or other intelligible manner, together with the names of the owners of all said lands.
2. The location of the drains and ditches to be constructed, describing their sources and outlets and the courses thereof.
3. The character and extent of drainage improvement to be constructed, including settling basins, if any.
4. The assessment of damages, if any.
5. The classification of the lands included in such district, the amount of drainage taxes or special assessments to be levied upon and against the several tracts, and when the same shall be levied and paid.
6. Such other provisions as the board deems necessary.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.153 in 1989 Code to §468.143 in 1989 Code Supplement

#### 468.144 Board to establish.

When such agreement is filed, the auditor shall record it in the drainage record. The board shall at a regular, special, or adjourned session thereafter locate and establish a drainage district and locate the ditches, drains, settling basins, and watercourses thereof as provided in said agreement, and enter of record an order accordingly. The board thereafter shall carry out the object, purpose, and intent of such agreement and cause to be completed and constructed the said improvement and shall retain jurisdiction of the same as fully as in districts established in any other manner. It shall cause to be levied upon and against the lands of such district, the drainage taxes and assessments according to said agreement and when collected said taxes and assessments shall constitute the drainage funds of said district to be applied upon order of the board as in said agreement provided.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.154 in 1989 Code to §468.144 in 1989 Code Supplement

**468.145 Procedure.**

The board shall proceed to carry out the provisions of the agreement, advertising for and receiving bids, letting the work, making contracts, levying assessments, paying on estimates, issuing warrants, improvement certificates, or drainage bonds as the case may be, in the same manner as in districts established on petition, except as in said mutual agreement otherwise provided.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.155 in 1989 Code to §468.145 in 1989 Code Supplement

**468.146 Outlet in adjoining county or in another state.**

1. When a drainage district is established and a satisfactory outlet cannot be obtained except through lands in an adjoining county, or when an improved outlet cannot be obtained except through lands downstream from the district boundary, the board shall have the power to purchase a right of way, to construct and maintain such outlets, and to pay all necessary costs and expenses out of the district funds. The board shall have similar authority relative to the construction and maintenance of silt basins upstream from the district boundary. In case the board and the owners of the land required for such outlet or silt basin cannot agree upon the price to be paid as compensation for the land taken or used, the board is hereby empowered to exercise the right of eminent domain in order to procure such necessary right of way.

2. When a district is, or has been established in this state and no practicable outlet therefor can be obtained except through lands in an adjoining state, the board of supervisors of the county where said district is situated shall, as drainage commissioners, have power to purchase a right of way and to construct a ditch for such outlet in an adjoining state or to contribute to the construction of such a ditch, in an adjoining state and to pay for the same out of the funds of such district. Provided, however, that no drainage district or districts shall be charged or assessed any of the cost for land or work done unless previously agreed to by the board of supervisors or trustees of all of the drainage districts which will be assessed.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.156 and 455.157 in 1989 Code to §468.146 in 1989 Code Supplement

**468.147 Tax.**

The board of supervisors shall have authority to levy a tax on the lands in said drainage district established in this state to provide funds from which to pay for the improvement referred to in section 468.146, subsection 2, should such levy be necessary.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.158 in 1989 Code to §468.147 in 1989 Code Supplement

**468.148 Injuring or diverting—damages.**

Any person who shall willfully break down or through or injure any levee or bank of a settling basin, or who shall dam up, divert, obstruct, or willfully injure any ditch, drain, or other drainage improvement authorized by law shall be liable to the person or persons owning or possessing the lands for which such improvements were constructed in double the amount of damages sustained by such owner or person in possession; and in case of a subsequent offense by the same person, the person shall be liable in treble the amount of such damages.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.159 in 1989 Code to §468.148 in 1989 Code Supplement

**468.149 Obstructing or damaging.**

Any person or persons willfully diverting, obstructing, impeding, or filling up, without legal authority, any ditch, drain, or watercourse or breaking down or injuring any levee or the bank of any settling basin, established, constructed, and maintained under any provision of law, or obstructing, or engaging in travel or

agricultural practices upon the improvement or rights of way of a levee or drainage district which the governing body thereof has, by resolution, determined to be injurious to such improvement or to interfere with its proper preservation, operation or maintenance, and has prohibited, shall be deemed guilty of a serious misdemeanor and any such unlawful act as above described is hereby declared to be a nuisance and may be abated as such.

Said governing body shall also have the power to repair any ditch, drain or watercourse, or any levee or bank of any settling basin damaged by any person or persons in violation of the resolution of said governing body, after three days' notice to such person or persons to make such repair, in the event that there is a failure to do so, and the expense thereof shall be assessed to such person or persons and shall be certified and collected as other taxes.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.160 in 1989 Code to §468.149 in 1989 Code Supplement

#### **468.150 Nuisance—abatement.**

Any ditch, drain, or watercourse which is now or hereafter may be constructed so as to prevent the surface and overflow water from the adjacent lands from entering and draining into and through the same is hereby declared a nuisance and may be abated as such.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.161 in 1989 Code to §468.150 in 1989 Code Supplement

#### **468.151 Actions—settlement—counsel.**

Levee or drainage districts through their governing bodies are authorized to maintain actions in law or equity for the purposes of preventing or recovering damages that may accrue to such districts on account of the impairment of their functions, or the increase in the cost of maintenance or operation of such districts, or on account of damages to property owned by such districts, resulting from the construction or operation of locks, dams and pools in the Mississippi or Missouri rivers; they may make settlements and adjustments of such damages and written contracts with relation thereto, and receive any appropriations that may be made by the Congress of the United States for the increased cost to drainage or levee districts and may agree to the construction and maintenance of present equipment and of new or remedial works, improvements and equipment as a part of such damages, or as a means of lessening the damages which will be suffered by the said districts. Said districts are further authorized to employ legal and engineering counsel for such purposes and to pay for the same out of the award of damages or out of the maintenance funds of the district.

If a lump sum settlement is made between the United States and the district to provide an annual payment of income therefrom, the county treasurer of the county in which the greater portion of the district is situated shall be custodian of such principal fund. The governing body of the district shall apply to the district court for authority to invest said fund as provided by section 682.23, in addition to the investments therein approved the court may authorize investment of said fund in interest-bearing bonds or warrants of said district. The income from said fund shall be disbursed by direction of the governing body of the district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.162 in 1989 Code to §468.151 in 1989 Code Supplement

#### **468.152 Waste banks—private use.**

The landowner may have any beneficial use of the land to which the landowner has fee title and which is occupied by the waste banks of an open ditch when such use does not interfere in any way with the easement or rights of the drainage district as contemplated by this subchapter, parts 1 through 5. For the purpose of gaining such use the landowner may smooth said waste banks, but in doing so the

landowner must preserve the berms of such open ditch without depositing any additional dirt upon them.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.163 in 1989 Code to §468.152 in 1989 Code Supplement

#### **468.153 Preliminary expenses—how paid.**

If the proposed district is all in one county, the board of supervisors may pay all necessary preliminary expenses in connection with the district. If it extends into other counties, the boards of the respective counties may pay a proportion of the expenses as the work done or expenses created in each county bears to the whole amount of work done or expenses created. The amounts shall be ascertained and reported by the engineer in charge of the work and be approved by the respective boards which shall, as soon as paid, charge the amount to the district, as their interests may appear, as soon as the district is established. If the district is not established, the amounts shall be collected upon the bond or bonds of the petitioners.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.164 in 1989 Code to §468.153 in 1989 Code Supplement

#### **468.154 Additional help for auditor.**

If the work in the office of the auditor by reason of the existence of drainage districts is so increased that the regular officer is unable by diligence to do the same, the board of supervisors may employ such additional help as may be necessary to keep the records and transact the business of the drainage districts. The expense of such help shall be paid by the districts in proportion to the amount of work done therefor.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.165 in 1989 Code to §468.154 in 1989 Code Supplement

#### **468.155 Employment of counsel.**

The board is authorized to employ counsel to advise and represent it and drainage districts in any matter in which they are interested. Attorney's fees and expenses shall be paid out of the drainage fund of the district for which the services are rendered, or may be apportioned equitably among two or more districts. Such attorneys shall be allowed reasonable compensation for their services, also necessary traveling expenses while engaged in such business. Attorneys rendering such services shall file with the auditor an itemized, verified account of all claims therefor, and statement of expenses, and the same shall be audited and allowed by the board in the amount found to be due.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.166 in 1989 Code to §468.155 in 1989 Code Supplement

#### **468.156 Compensation of appraisers.**

Persons appointed to appraise and award damages and make classification of lands and assess benefits, other than the engineer, shall receive such compensation as the board may fix and in addition thereto, the necessary expense of transportation of said persons while engaged upon their work. They shall file with the auditor an itemized, verified account of the amount of time employed upon said work and their expenses.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.167 in 1989 Code to §468.156 in 1989 Code Supplement

#### **468.157 Payment.**

All compensation for services rendered, fees, costs, and expenses when properly shown by itemized and verified statement shall be filed with the auditor and allowed by the board in such amounts as shall be just and true, and when so allowed shall be paid on order of the board from the levee or drainage funds of the

district for which such services were rendered or expenses incurred, by warrants drawn on the treasurer by the auditor.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.169 in 1989 Code to §468.157 in 1989 Code Supplement

#### **468.158 Purchase at tax sale.**

When land in a levee, drainage, or improvement district is being sold at a tax sale for delinquent taxes or assessment, the board of supervisors or the district trustees, as the case may be, shall have authority to bid in such land or any part of it, paying the amount of the bid from the funds of the district, and taking the certificate of sale in their names as trustees for such district, and may thereafter pay any assessments for taxes or benefits levied against said premises from the district funds. The amount paid for redemption which shall include such additional payment, shall be credited to the district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.170 in 1989 Code to §468.158 in 1989 Code Supplement

#### **468.159 Tax deed—sale or lease.**

If no redemption shall be made the board of supervisors or trustees, as the case may be, shall receive the tax deed as trustees for the district. They shall credit the district with all income from said property. They may lease or sell and convey said property as trustees for such district and shall deposit all money received therefrom to the credit of such district. The board of trustees may also lease or sell and convey such other property of the district, both real and personal, as is no longer needed for the purposes for which the district was established, and any such leases, sales and conveyances prior to July 1, 1970, are hereby legalized and declared to be valid and binding.

This amendment in 1978 shall not be construed to affect any litigation involving the lease, sale or conveyance of property by the board of supervisors or board of trustees, as the case may be, of a drainage or levee district, which litigation is pending on July 1, 1978.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.171 in 1989 Code to §468.159 in 1989 Code Supplement

#### **468.160 Purchase of tax certificate.**

When land in a drainage or levee district, or subdistrict, is subject to an unpaid assessment and levy for drainage purposes and has been sold for taxes the board of supervisors of that county, or if control of the district has passed to trustees then such trustees, may purchase the certificate of sale issued by the county treasurer by depositing with the county auditor the amount of money to which the holder of the certificate would be entitled if redemption was made at that time, and thereupon the rights of the holder of the certificate and the ownership thereof shall vest in the board of supervisors, or the trustees of that district, as the case may be, in trust for said drainage district or subdistrict.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.172 in 1989 Code to §468.160 in 1989 Code Supplement

#### **468.161 Terms of redemption.**

Redemption from said tax sale shall be made on such terms as may be agreed upon between such board of supervisors or such trustees and the owner of the land involved; but in any case in which the owner of said land will pay as much as fifty percent of the value of the land at the time of redemption the owner shall be permitted to redeem. If the parties cannot agree upon such value, either of them may bring an action against the other in the district court of the county where the land is situated, and the court shall determine the matter. The proceeding shall be triable in equity.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.173 in 1989 Code to §468.161 in 1989 Code Supplement

**468.162 Payment—assignment of certificate.**

When such money is deposited with the county auditor, the auditor shall by mail notify the purchaser at said tax sale, or the latter's assignee if of record, and shall pay to the holder of such certificate the sum of money deposited with the auditor for that purpose on surrender of the certificate with proper assignment thereon to the board of supervisors, or to the trustees of said district, as the case may be, as trustee for said district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.174 in 1989 Code to §468.162 in 1989 Code Supplement

**468.163 Funds.**

Payment to the county auditor for such certificate shall be from the fund of said drainage or levee district, or subdistrict, on a warrant issued against that fund which shall have precedence over all other outstanding warrants drawn against that fund in the order of their payment. Should there not be a sufficient amount in the fund of said district, or subdistrict, to pay said warrant then the board of supervisors, or the trustees of the district, as the case may be, are authorized to borrow a sum of money sufficient for that purpose on a warrant for that amount on the fund of the district, or subdistrict, which warrant shall bear interest from date at a rate not exceeding that permitted by chapter 74A and shall have preference in payment over all other unpaid warrants on said fund, and the county treasurer shall so enter the same on the list of warrants in the treasurer's office and call the same for payment as soon as there is sufficient money in said fund.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.175 in 1989 Code to §468.163 in 1989 Code Supplement

**468.164 Lease or sale of land.**

If said certificate goes to deed to the board or to the trustees, all leases and sales of the land shall be effected and record thereof made in the same manner in which leases and sales are effected and record thereof made when the county acquires title as a purchaser under execution sale.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.176 in 1989 Code to §468.164 in 1989 Code Supplement

**468.165 Duty of treasurer.**

When any lands in a drainage or levee district, or subdistrict, are subject to an unpaid assessment and levy for drainage purposes and are sold for a less sum of money than the amount of delinquent taxes thereon the county treasurer shall immediately report that fact to the board of supervisors, or to the trustees for the district, as the case may be.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.177 in 1989 Code to §468.165 in 1989 Code Supplement

**468.166 Purchase by bondholder.**

In any event where upon the request of the holder of any bond or bonds issued by any drainage district the board of supervisors shall fail, neglect or refuse to purchase the certificate of sale issued by the county treasurer and referred to in section 468.160 in manner and form as permitted by said section, the holder of such bond or bonds may, upon filing with the county auditor a sworn statement as to the making of such written request upon the board of supervisors and a recital of the failure of such board to act in the premises by complying with the provisions of said section, in the same manner and form purchase such certificate and the ownership thereof shall thereupon vest in such holder of such bond or bonds in trust for said drainage district or subdistrict, provided, however, that the holder shall have a lien upon said certificate and any beneficial interest arising therefrom for the holder's actual outlays including the holder's reasonable expenses and attorney's fees, if any, incurred in the premises. In the event any such holder of any bond or bonds shall acquire title the holder shall have a right

to lease or convey said premises, upon giving thirty days' written notice to the board of supervisors by filing the same with the county auditor and in the event said board shall not approve said lease or sale, the same shall be referred to the district court of the county where the land is situated and there tried and determined in the manner prescribed in section 468.160. Any funds realized from the lease or sale of said land shall be first applied in extinguishing the lien of the holder of the certificate herein provided for and the balance shall be paid to the said drainage bond fund of said district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.178 in 1989 Code to §468.166 in 1989 Code Supplement

#### **468.167 Voting power.**

In case any proposition arises in said district to be determined by the vote of parties owning land therein, notice of such hearing shall be given and the board of supervisors or trustees, as the case may be, while holding title in trust to any such land, shall have the same right to vote for or against such proposition as the former owner would have had if the former owner had not been divested of the title to said land.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.179 in 1989 Code to §468.167 in 1989 Code Supplement

#### **468.168 Inspection of improvements.**

The board of any county into which a levee or drainage improvement extends shall cause a competent engineer to inspect such levee or drainage improvement as often as it deems necessary for the proper maintenance and efficient service thereof. The engineer shall make report to the board of the condition of the improvement, together with such recommendations as the engineer deems necessary. For any claim for services and expenses of inspection, the engineer shall file with the auditor an itemized and verified account of such service and expense to be allowed by the board in such amount as it shall find due and paid out of the drainage funds of the district. If the district extends into two or more counties, such action shall be had jointly by the several boards, and the expenses equitably apportioned among the lands in the different counties.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.180 in 1989 Code to §468.168 in 1989 Code Supplement

#### **468.169 Watchpersons.**

When a levee has been established and constructed in any county, the board shall be empowered to employ one or more watchpersons, and fix their compensation, whose duty it shall be to watch such levee and make repairs thereon in case of emergency. Such employee shall file with the auditor an itemized, verified account for services rendered, and cost and expense incurred in watching or repairing such levee, and the same shall be audited and allowed by the board as other claims and paid by the county from funds belonging to such district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.181 in 1989 Code to §468.169 in 1989 Code Supplement

#### **468.170 Technical defects.**

The collection of drainage taxes and assessments shall not be defeated where the board has acquired jurisdiction of the interested parties and the subject matter, on account of technical defects and irregularities in the proceedings occurring prior to the order of the board locating and establishing the district and the improvements therein.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.183 in 1989 Code to §468.170 in 1989 Code Supplement

**468.171 Conclusive presumption of legality.**

The final order establishing such district when not appealed from, shall be conclusive that all prior proceedings were regular and according to law.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.184 in 1989 Code to §468.171 in 1989 Code Supplement

**468.172 Drainage record.**

The board shall provide a drainage record book, which shall be in the custody of the auditor, who shall keep a full and complete record therein of all proceedings relating to drainage districts, so arranged and indexed as to enable any proceedings relative to any particular district to be examined readily.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.185 in 1989 Code to §468.172 in 1989 Code Supplement

**468.173 Records belong to district.**

All reports, maps, plats, profiles, field notes, and other documents pertaining to said matters, including all schedules, and memoranda relating to assessment of damages and benefits, shall belong to the district to which they relate, remain on file in the office of the county auditor, and be matters of permanent record of drainage proceedings.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.186 in 1989 Code to §468.173 in 1989 Code Supplement

**468.174 Membership in the National Drainage Association.**

Any drainage district may join and become a member of the National Drainage Association. A drainage district may pay a membership fee and annual dues upon the approval of the drainage board of such district, but not in excess of the following:

One hundred dollars for drainage districts having indebtedness in excess of one million dollars.

Fifty dollars for drainage districts having an indebtedness of five hundred thousand dollars and less than one million dollars.

Twenty-five dollars for drainage districts having an indebtedness of two hundred fifty thousand dollars and less than five hundred thousand dollars.

Ten dollars for drainage districts having an indebtedness less than two hundred fifty thousand dollars.

The annual dues for any district shall not exceed one-twentieth of one percent of the outstanding indebtedness of the district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.187 in 1989 Code to §468.174 in 1989 Code Supplement

**468.175 Membership fee.**

The cost of membership fees and dues shall be assessed against the land in the drainage district and collected in the same manner and in the same ratio as assessments for the cost and maintenance of the drainage district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.188 in 1989 Code to §468.175 in 1989 Code Supplement

**468.176 Other associations.**

Levee or drainage districts are authorized to become members of drainage associations for their mutual protection and benefit, and may pay dues and membership fees therein out of the maintenance funds.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.189 in 1989 Code to §468.176 in 1989 Code Supplement

**468.177 Receiver authorized.**

Whenever the governing board of any drainage or levee district becomes the owner of a tax sale certificate, for any tract of land within the district, and one or more year's taxes subsequent to the tax certificate have gone delinquent, the said

governing board may, on behalf of such district, make application to the district court of the county within which such real estate or a part thereof is situated, for the appointment of a receiver to take charge of said delinquent real estate.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.190 in 1989 Code to §468.177 in 1989 Code Supplement

#### **468.178 Hearing and notice thereof.**

Upon the filing of the petition for such appointment, the court shall fix a time and place of hearing thereon, and shall prescribe and direct the manner for the service of notice upon the owner, lienholders and persons in possession of said real estate, of the pendency of said application.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.191 in 1989 Code to §468.178 in 1989 Code Supplement

#### **468.179 Appointment—grounds.**

Said application shall be heard by the court, at the time and place so designated, and after hearing thereon the court may appoint one of the members of the governing board of said drainage or levee district as receiver for said real estate, on the grounds that the said real estate is producing returns, and that the general and special taxes against the same are not being paid, and direct the receiver to forthwith take possession of the same and to collect the rents, issues and profits therefrom.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.192 in 1989 Code to §468.179 in 1989 Code Supplement

#### **468.180 Bond.**

The cost of the premium of the bond of such receiver shall be paid for out of the general funds of the drainage or levee district, and no charge shall be made by the receiver for compensation in said cause.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.193 in 1989 Code to §468.180 in 1989 Code Supplement

#### **468.181 Avoidance of receivership.**

The owner of any such tract of real estate may avoid the appointment of such receiver, either before or after the action is commenced, by entering into a good and sufficient written instrument with the governing board of such district, agreeing to apply the rent share of the products of said land, or its equivalent to the payment of taxes thereon.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.194 in 1989 Code to §468.181 in 1989 Code Supplement

#### **468.182 Preference in leasing.**

In the event a receiver is appointed for any tract of land, the owner if actually in possession thereof, shall have the preference to rent the same.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.195 in 1989 Code to §468.182 in 1989 Code Supplement

#### **468.183 Rents—application of.**

The rents, issues and profits of the real estate when collected by the receiver, shall be applied as follows:

1. To the payment of the costs and expenses of the receivership.
2. To the payment of current general taxes against said real estate.
3. To the payment of any current special taxes against said real estate.
4. The surplus shall be applied upon any delinquent taxes or tax certificates, and the remainder, if any, shall be paid to the owner of said real estate.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.196 in 1989 Code to §468.183 in 1989 Code Supplement

**468.184 Land classification and assessment in district.**

1. *a.* When a levee district shall have been located and finally established; or  
*b.* When the required proceedings have been taken to enlarge, extend, strengthen, raise, relocate, reconstruct, or improve any existing levee; or

*c.* When the required proceedings have been held to annex additional lands to said levee district or to exclude or eliminate lands from said levee district; or

*d.* When a plan of the United States government for the construction of any levee, or a portion of a levee, in said levee district, or for the enlarging, extending, strengthening, raising, relocating, reconstructing, or improving any existing levee, or a portion thereof, in accordance with any such plan in said levee district, has been heretofore or hereafter adopted by such levee district under the provisions of sections 468.201 through 468.216; or

*e.* When the board shall, as authorized by section 468.65, determine that the assessments of benefits of said levee district against the lands in said levee district are generally inequitable the board may by resolution, or if a petition is filed by more than one-third of the owners, including corporations, of land within said levee district and who in the aggregate own more than one-third of the value of the land and land improvements in said levee district as the value thereof is then shown by the general tax records of the county or counties in which such land and land improvements are located, requesting the board to do so, the board shall order the lands in said levee district and the improvements on the land in said levee district classified or reclassified in accordance with the assessed taxable value of said land and land improvements as the same are then shown and as the same may be thereafter shown by the assessment roll of the county or counties in which said land and land improvements are located.

The assessed taxable value of any land, including land improvements exempt from general taxation but subject to assessment for levee purposes, shall be determined by the county assessor who shall make such determination in accordance with the rules of assessment applicable to adjacent lands and without any additional compensation therefor.

2. If the board orders classification or reclassification of lands as authorized in subsection 1 of this section, the board shall fix a time and place for a hearing to be held upon the action of the board in ordering such classification or reclassification, which hearing shall be held at the county seat of the county having the largest acreage in said levee district. The board shall cause notice of the time and place of such hearing to be served by the county auditor or auditors upon each person whose name appears as owner of lands or land improvements within the levee district in the transfer books of the auditor's office in the county or counties in which said levee district is located, naming that person, and also upon the person or persons in actual occupancy of any tract of land or land improvements located in said levee district, without naming that person or persons. Such notice shall be for the same time and served in the same manner as is provided for the establishment of a levee district, and such notice shall state:

*a.* The aggregate estimated costs and expenses which the board proposes to assess under such classification or reclassification;

*b.* The total aggregate assessed taxable value of all lands and land improvements in said levee district;

*c.* That the said classification or reclassification of benefits will be based on the assessed taxable value of all lands and improvements to lands located in said levee district;

*d.* That each tract of land and each land improvement in said levee district will be assessed for its pro rata share of said costs and expenses based upon the ratio that the assessed value of each tract of land and the assessed value of each land improvement bears to the total assessed taxable value of all lands and all land improvements in said district; and

e. That all objections to said method of classification or reclassification shall be in writing and filed with the auditor of the county in which said land or land improvements are located before the time set for said hearing or with the board of trustees of said district at or before the time set for such hearing.

The notice need not show the amount of such costs and expenses to be apportioned to each such owner or to any particular tract of land or land improvement within such levee district.

3. If at or before the time set for said hearing as to such classification or reclassification, there shall have been filed with the county auditor, or auditors in case the district extends into more than one county, or with said board, a remonstrance or remonstrances or objections to such method of classification or reclassification signed by owners of land and land improvements in the levee district aggregating sixty percent of the total assessed value of the lands plus land improvements in said district as shown by the taxing records in said county or counties in which said district is located, the board shall abandon the alternative method of classification or reclassification herein authorized. The board may then proceed to classify the lands in said levee district as authorized under sections 468.38 through 468.44 or may proceed to reclassify the same as authorized under section 468.65 unless said remonstrances and objections filed as above provided are filed by a majority of the landowners in the levee district and these remonstrants and objectors in the aggregate own seventy percent or more of the acreage of lands in the levee district and, in writing, object to any reclassification of any kind, then the board shall not reclassify the lands within the district under the provision of this section nor shall the same be reclassified under the provisions of section 468.65.

4. At the time fixed or at any adjourned hearing if the remonstrances and objections filed at or before the hearing are not signed by sufficient number of owners, or the owners signing such remonstrances and objections do not meet the requirements hereinabove provided, then the board shall fully consider all objections and remonstrances and shall make a determination as to whether or not the costs and expenses shall be assessed:

- a. By the alternative method hereinabove set forth; or
- b. As provided by sections 468.38 through 468.44; or
- c. That the land should be reclassified as provided in section 468.65; or
- d. On the basis of a then existing classification of lands.

5. If the board shall determine that the cost and expenses shall be assessed on the basis of assessed taxable value as hereinabove provided, then such basis shall be used for all future assessments made for the purposes of said levee district except if said assessed taxable value of lands and land improvements in said levee district may be changed or revised by the county assessor in the county or counties in which the same are located for general tax purposes, then any such revision made in the assessed taxable value by any such county assessor shall automatically constitute a revision of the classification of such land or land improvements for future assessments made by the board for the purpose of said levee district.

6. In lieu of the hearing provided for in the preceding subsections, the board may, and if the petition of owners provided for in the preceding subsections so asks, the board shall call for an election for the purpose of determining the question of classification on the basis of assessed value of lands and land improvements. The question may be submitted at a regular election of the district or at a special election called for that purpose. It shall not be mandatory for the county commissioner of elections to conduct the elections, however provisions of sections 49.43 through 49.47 and of subchapter III of this chapter, insofar as the same are applicable, shall govern all such elections, and the question to be submitted shall be set forth in the notice of election. If sixty percent of the votes cast be in favor of the proposed change in assessment, it shall become effective for

all future assessments as heretofore provided in this section. If the question should fail, no new election on the subject may be called for a period of one year.

7. When a levee district has been established and constructed, as an alternative to the other methods prescribed by law, upon reclassification, the levee district may adopt a method of classification and assessment uniform as to all land in the district, including railroad land, public highways and other public land and land exempt from general taxation, based on the total amount to be assessed divided by the total acres within the district. This method of classification and assessment may be adopted either by hearing or by election and shall become effective as heretofore provided in this section.

8. When a drainage district or drainage and levee district has been established and constructed, and after the lands therein have been classified in accordance with the provisions of sections 468.39, 468.40, and 468.41 or reclassified in accordance with section 468.65, the district may adopt methods of assessment for maintenance, repair, and operation of said district uniform as to all land in the district in the same manner and by the same procedures as prescribed in subsections 1 through 7 of this section. Provided, however, that only those lands drained by respective mains and laterals shall be assessed for maintenance, repair, and operation of said mains and laterals, and provided further that this alternate method of assessment shall not be applied to making improvements in the drainage system.

9. Following the adoption of any alternative method of classification or assessment as provided in this section, the same shall continue in effect until such time as the method is changed pursuant to this section or to section 468.65.

10. All proceedings taken prior to July 1, 1968, purporting to establish or re-establish a drainage or levee district or districts, or to enlarge or change the boundaries of any drainage or levee district, and any assessments not heretofore declared invalid by any court, are hereby legalized, validated, and confirmed.

The foregoing shall not be construed to affect any litigation that may be pending at the time this section becomes effective involving the establishment, re-establishment, enlargement, or change in boundaries or any assessments of drainage or levee districts.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.197 in 1989 Code to §468.184 in 1989 Code Supplement

#### **468.185 Warrants not paid for want of funds.**

Chapter 74 shall be applicable to all warrants which are legally drawn on levee and drainage district funds and are not paid for want of funds.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.198 in 1989 Code to §468.185 in 1989 Code Supplement

#### **468.186 Easements through a drainage district.**

As used in this section, "person" shall mean any individual or group of individuals, corporation, firm, company, or association, except a railroad company.

1. When any person proposes to construct a pipeline, electric transmission line, communication line, underground service line, or other similar installations on, over, across, or beneath the right of way of any drainage or levee district, such person shall, before beginning construction, obtain from the drainage or levee district an easement to cross the district's right of way. The governing body of the district shall require such person to agree to comply with subsection 3 of this section and may, as a condition of granting such easement, attach thereto such additional conditions as they deem necessary. When the necessary easement has been obtained, such person shall construct the installation at the person's own expense and shall pay all costs of any reconstruction, relocation, modification, or reinstallation of the drainage or levee district's facility which may be necessary as a result of construction of the installation for which the easement was granted.

2. After construction of the installation has been completed in accordance with all conditions under which the easement is granted, the drainage or levee district shall maintain its facility at its own expense, and the person who constructed the installation, or the person's successors in interest, shall maintain the installation at the person's or successor's own expense. If the drainage or levee district subsequently undertakes any maintenance, improvement, or reconstruction of its facility which requires the modification, relocation, or reconstruction of the installation, the expense of such modification, relocation, or reconstruction shall be borne by the person who constructed the installation or the person's successors in interest.

3. When the construction of a public highway, or any installation for which an easement has been obtained under subsection 1 of this section, on, over, across, or beneath the right of way of any drainage or levee district disturbs or requires replacement of any portion of a tile drain less than twenty inches in diameter, and a portion of such drain will remain wholly or partially exposed after the construction project has been completed, the portion which is to remain exposed and not less than three feet of such drain immediately on either side of the portion which is to remain exposed, shall be replaced either with steel pipe of not less than sixteen gauge or polyvinyl chloride pipe conforming to current industry standards regarding diameter and wall thickness.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.199 in 1989 Code to §468.186 in 1989 Code Supplement

#### **468.187 Agreements with outside owners or other districts.**

Levee and drainage districts are empowered to enter into agreements with the owners of lands lying outside of said districts, or with other levee and drainage districts or municipalities, to provide levee protection or drainage for such lands on such terms as the board may agree and subject to the following terms and conditions:

1. The facilities of the district furnishing the service shall not be overburdened.
2. There shall be no additional cost to the district furnishing the service.
3. The agreement shall be in writing, be made a part of the drainage records and shall include the following:
  - a. The description of the lands to be served;
  - b. The location of tile lines constructed or to be constructed;
  - c. The consideration to be paid to the district furnishing the service and the classification of the lands to be served; and
  - d. Such other provisions as the board deems necessary.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.200 in 1989 Code to §468.187 in 1989 Code Supplement

#### **468.188 Public improvements which divide a district—procedure.**

If it should develop that any type of public improvement, other than the forces of nature, has caused such a change in the district as to effectively sever and cut off some of the land in the district from other lands in the district and from the improvements in the district in such a way as to deprive the land of any further benefits from the improvement, or in some manner to divide the benefits that may be derived from two separated portions of the improvement, then the board of supervisors or the board of trustees in charge may upon notice to interested parties and hearing as provided by this subchapter, parts 1 through 5, for the original establishment of a district make an order to remove lands so deprived of benefits from the district without any reclassification, or may subdivide the district into two separate entities if the public improvement splits the district into two separate units, each of which may still derive some separate benefits from the separated portions of the district.

If the public improvement is such as to leave two separate portions of the improvement that are still operable and of benefit to the land on each side of the division made by the public improvement, then the board may divide the district into two separate units so that each may perform further work on the improvements in their respective parts, but neither shall be charged for work completed on the opposite side of the new improvement that divides them and may only be charged for the work done in that portion of the district remaining on their side of the division.

The same authority provided in this section shall vest in the board of supervisors or the board of trustees in the event a drainage district in any manner relinquishes its control over any portion of its improvements or its obligation to maintain same to another district and lands may be removed from the district or the district may be divided as provided in this section.

The board may further in dividing the district award to each of the separated portions of the district the improvement remaining in each portion, determine the value of the improvement so remaining on each side and secondly determine the contributions of the lands in the separated portions to the improvements and the upkeep of the earlier district, and if the contribution is proportionate neither side shall owe the other portion of the district any money, but if contribution is disproportionate, the board shall determine an equitable adjustment and the amount of payment required for one portion to pay to the other to buy the existing improvement.

If land is eliminated from any further benefits, there need not be any reclassification and the board may remove the same from the district in the same manner as if the land has been destroyed in whole by the erosion of a river and spread any deficiency in assessment among the remaining lands as provided by section 468.49.

“Type of public improvement” for the purpose of this section includes drainage or levee improvements or new highways.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.201 in 1989 Code to §468.188 in 1989 Code Supplement

**468.189 through 468.200 Reserved.**

## PART 2

### FEDERAL FLOOD CONTROL CO-OPERATION

#### **468.201 Plan of improvement.**

1. Whenever the government of the United States acting through its proper agencies or instrumentalities will undertake the original construction of improvements or the repair or alteration of existing improvements which will accomplish the purposes for which the district was established or aid in the accomplishment thereof and shall cause to be filed in the office of the auditor of the county in which said district is located a plan of such improvement or for the repair or alteration of existing improvements, the board shall have jurisdiction, power and authority, upon the notice, hearing and determination hereinafter provided, to adopt such plan of improvement or of repair or alteration of existing improvements and to provide necessary right of way therefor; and to pay such portion of all costs and damages incident to the adoption of such plan, the construction thereunder and the maintenance and operation of the works as will not be discharged by the federal government under legislation existing at the time of adoption; also to enter into such agreements with the United States government as may be necessary to meet federal requirements including the taking over, repair and maintenance of the works and to perform under such agreements.

2. If the cost to the district of the repair or alteration of existing improvements contemplated by this section does not exceed twenty-five percent of the sum of the

original cost to the district and the cost of subsequent improvements, including all federal contributions, the board may proceed under the provisions of section 468.126, without notice and hearing, and without appraisal as contemplated by section 468.210, but the remaining provisions of this section and sections 468.202 through 468.216 that are not in conflict with section 468.126 shall remain applicable.

If the federal program divides a project into separate phases, each phase shall be considered a separate program as described in section 468.126, subsection 4, and shall in no event be construed as an unauthorized division into separate programs to avoid the twenty-five percent limitation prescribed for making improvements under said section 468.126, subsection 4, without notice and hearing.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.202 in 1989 Code to §468.201 in 1989 Code Supplement

#### **468.202 Agreement in advance.**

The agreement with the federal government contemplated in section 468.201 may be entered into by the board in advance of the filing of the plan—such agreement to be effective if the plan is finally adopted. If the plan is approved the board shall make a record of any such co-operative agreement.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.203 in 1989 Code to §468.202 in 1989 Code Supplement

#### **468.203 Engineer appointed.**

After the filing of the plan contemplated in section 468.201 the board shall, at its first session thereafter, regular, special or adjourned, appoint a disinterested and competent civil or drainage engineer who shall give bond in an amount to be fixed by the board conditioned for the faithful and competent performance of the engineer's duties.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.204 in 1989 Code to §468.203 in 1989 Code Supplement

#### **468.204 Engineer's report.**

The engineer shall examine the plan filed by the federal agency and the lands affected thereby and shall make and file with the county auditor a full written report which, together with the federal plan, will show the following:

1. The character and location of all contemplated improvements, and the plats, profiles and specifications thereof.
2. The particular description and acreage of land required from each forty-acre tract or fraction thereof for right of way, borrow pits or other purposes together with congressional or other description of each tract and the names of the owners thereof as shown by the transfer books in the office of the auditor.
3. A particular description of each forty-acre tract or fraction thereof that will be excluded from benefit by adoption of the plan as filed, together with the name of the owners thereof as shown by the transfer books in the office of the auditor.
4. A particular description of each forty-acre tract or fraction thereof outside the district which will benefit from adoption of the plan as filed and the name of the owner thereof as shown by the transfer books in the office of the auditor.
5. Such rights of way or portions thereof previously established or acquired as will be rendered unnecessary by adoption of the federal plan and any unpaid damages awarded therefor.
6. Such other damages previously awarded as will be affected by adoption of the federal plan.
7. The recommendation of the engineer with respect to the adoption of the plan.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.205 in 1989 Code to §468.204 in 1989 Code Supplement

**468.205 Supplemental reports.**

Upon the filing of such report the board shall examine and consider the same together with the plan and the commitments involved in its adoption and may require supplemental reports of the engineer or of another disinterested engineer with such data as they may deem necessary or desirable including recommendations for any change or modification, negotiate with the federal agency involved and amend the plan in such manner as may be mutually agreed upon. The engineer shall make such supplemental reports as may be required by the board or necessitated by amendment of plan.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.206 in 1989 Code to §468.205 in 1989 Code Supplement

**468.206 Notice and hearing.**

If upon consideration of the plan or amended plan and the report or reports of the engineer and the commitments involved in the adoption of the plan the board finds that the district will benefit therefrom or the purposes for which the district was established will be promoted thereby, the board shall adopt the same as a tentative plan, entering order to that effect and fixing a date for hearing thereon not less than thirty days thereafter and directing the auditor to cause notice to be given of such hearing as hereinafter provided.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.207 in 1989 Code to §468.206 in 1989 Code Supplement

**468.207 Form of notice.**

Such notice shall be captioned in the name of the district and shall be directed to the owners of each tract or lot within said levee or drainage district, including railroad companies having rights of way, lienholders and encumbrancers, and to all owners, lienholders or encumbrancers of lands which an adoption of the plan would exclude from benefits and of lands outside the district which will benefit therefrom and to all other persons whom it may concern and, without naming them, to the occupants of all lands affected and shall set forth that there is on file in the office of the auditor a plan of construction of the federal agency (naming it), together with reports of an engineer thereon, which the board has tentatively approved, and that such plan may be amended before final action; also the day and hour set for hearing on the adoption of said plan, and that all claims for damages, except claims for land required for right of way or construction, and all objections to the adoption of said plan for any reason must be made in writing and filed in the office of the auditor at or before the time set for hearing. Provisions of this subchapter, parts 1 through 5, for giving notice, waiver of notice, waiver of objection and damages and adjournment for service contained in sections 468.15 through 468.20 shall apply.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.208 in 1989 Code to §468.207 in 1989 Code Supplement

**468.208 Amendment—new parties.**

The board may continue the hearing pending decision and may amend the plan but in the event of amendment the board shall continue further hearing to a fixed date. All parties over whom the board then has jurisdiction shall take notice of such further hearing but any new parties rendered necessary by the modification or change of plans shall be served with notice as for the original hearing.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.209 in 1989 Code to §468.208 in 1989 Code Supplement

**468.209 Entry of order—effect.**

If the board, after consideration of the subject matter, including all objections filed to the adoption of the plan and all claims for damages, shall find that the district will be benefited by adoption of the plan or the purposes for which the

district was established is furthered thereby, they shall enter order approving and adopting such final plan. Such order shall have the effect of:

1. Altering the boundaries of the district to conform to the changes effected by the plan adopted.

2. Canceling all existing awards for damages for property not appropriated for right of way or construction and rendered unnecessary by the plan so adopted.

3. Canceling all awards previously made for damages other than for right of way or construction but reinstating the claims for such damages which said claims may be amended by the claimants within ten days thereafter.

4. Canceling all unpaid assessments for benefits on lands excluded from the district by adoption of the plan. The assessments so canceled shall become part of the costs of the improvement.

5. Establishing as benefited thereby the lands added to the district by adoption of the plan and rendering same subject to classification and assessment.

6. Whenever a plan has been adopted as contemplated by this section, modification and changes can be made therein without further notice or hearing, provided the same do not increase or decrease the estimated cost of the plan to the district by more than twenty-five percent.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.210 in 1989 Code to §468.209 in 1989 Code Supplement

#### **468.210 Appraisalment.**

The board shall thereupon appoint three appraisers of the qualifications prescribed in section 468.24, who shall qualify in the manner therein provided, and shall fix a time for hearing on their report of which all interested parties shall take notice. The appraisers shall view the premises and fix and determine the damages to which each claimant is entitled, including claimants whose awards for damages were canceled by the order of adoption, and shall place a separate valuation upon the acreage of each owner taken for right of way or other purposes necessitated by adoption of the plan and shall file a report thereof in writing in the office of the auditor at least five days before the date fixed by the board for hearing thereon. Should the report not be filed on time or should good cause for delay exist the board may postpone the time for final action on the subject and, if necessary, may appoint other appraisers. Thereafter the provisions of section 468.26 shall apply.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.211 in 1989 Code to §468.210 in 1989 Code Supplement

#### **468.211 Assessment of benefits.**

Appointment of commissioners to assess benefits and classify lands within the district and all proceedings relative to such assessment and classification shall be as otherwise provided in this subchapter, parts 1 through 5, except that when the lands of the district have previously been classified, the commissioners shall classify and assess only such lands as have been added to the district by adoption of the plan and recommend such changes in existing classifications as are materially affected by the plan so adopted. The board may, upon hearing, adjust the classification of lands affected by the plan.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.212 in 1989 Code to §468.211 in 1989 Code Supplement

#### **468.212 Installments—warrants.**

The board shall levy the costs contemplated in section 468.201 upon all of the lands of the district on the basis of the classification for benefits as finally established and the assessments so levied shall be paid in one installment unless the board in its discretion shall provide for the payment thereof in not more than twenty equal installments with interest at a rate not exceeding that permitted by chapter 74A. The board may issue anticipatory warrants bearing interest at a rate

not exceeding that permitted by chapter 74A. The warrants may be numbered and state a maturity date. The warrants may be sold by the board for cash in an amount not less than the face value thereof, together with accrued interest, if any.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.213 in 1989 Code to §468.212 in 1989 Code Supplement

#### **468.213 Subsequent levies.**

The board shall make such subsequent levies as may be necessary to meet the expenses of the district including costs of maintenance, repair and operation of the works.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.214 in 1989 Code to §468.213 in 1989 Code Supplement

#### **468.214 Applicable statutes.**

Except as otherwise provided herein all provisions of this chapter relative to assessment of damages, appointment of an engineer, employment of counsel, payment for work, levy and collection of drainage and levee assessments and taxes, the issue of improvement certificates and drainage or levee bonds, the taking of appeals and the manner of trial thereof and all other proceedings relating thereto shall apply.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.215 in 1989 Code to §468.214 in 1989 Code Supplement

#### **468.215 Scope of plan.**

The provisions of this part shall be applicable to districts organized or established under the provisions of subchapters II and III.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.216 in 1989 Code to §468.215 in 1989 Code Supplement

#### **468.216 Districts under trustees.**

When a district is in the management of trustees as provided in subchapter III the board of trustees shall have the jurisdiction to adopt the federal plan as provided herein and to exercise all other powers herein granted except that any levy shall be made by the board of supervisors upon certificate of the amount necessary by the trustees as provided in section 468.527.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.217 in 1989 Code to §468.216 in 1989 Code Supplement

#### **468.217 through 468.219 Reserved.**

### PART 3

#### STATE LANDS

#### **468.220 Occupancy and use permitted—assessments paid.**

Any levee or drainage district organized, or in the process of being organized, under the laws of this state may occupy and use for any lawful levee or drainage purpose land owned by the state of Iowa, upon first obtaining permission to do so from the state or state agency controlling the same.

In the case of lands lying within the beds of meandered streams and border streams the permission shall be obtained from the natural resource commission of the department of natural resources. In the case of lands that are under the control of no office or agency of the state, then the permission shall be obtained from the executive council.

Such permission shall not be unreasonably withheld and shall be in the form of an easement executed by the governor or in the case of an agency, by the chairperson or presiding officer thereof, and when once granted shall be perpetual, except that if no use is made of the same for a period of five years such permission shall immediately thereafter expire.

All uses and occupancies as contemplated by this section existing on July 4, 1961, are hereby legalized.

The state of Iowa, its agencies and subdivisions shall be financially responsible for drainage and special assessments against land which they own, or hold title to, within existing drainage districts.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.218 in 1989 Code to §468.220 in 1989 Code Supplement

**468.221 through 468.229 Reserved.**

PART 4

BOARD OF COUNTY DRAINAGE ADMINISTRATORS

**468.230 Administrators appointed.**

The county board of supervisors of any county of this state in which one or more drainage districts are established may by resolution establish a board of county drainage administrators. All of the powers, duties, and responsibilities now or hereafter conferred on county boards of supervisors in this chapter shall thereupon be transferred to and thereafter exercised by the board of county drainage administrators. A drainage or levee district may be established pursuant to subchapter III.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.219 in 1989 Code to §468.230 in 1989 Code Supplement

**468.231 Administrator areas.**

When establishing a board of county drainage administrators, the board of supervisors shall divide the county, along township lines, into three drainage administrator areas of approximately equal territory. The board of county drainage administrators shall consist of one resident freeholder appointed by the county board of supervisors from each area, and at least two of the administrators shall be agricultural landowners. The members first appointed shall hold office for terms of one, two, and three years respectively, as indicated and fixed by the county board of supervisors. Thereafter, succeeding members shall be appointed for a term of three years, except that vacancies occurring otherwise than by expiration of a term shall be filled by appointment for the unexpired term. Any member of the board of county drainage administrators who shall cease to have any of the qualifications prescribed by this section shall thereupon be disqualified as a member of the board and the office shall be deemed vacant. Members of the board of county drainage administrators may be removed by the county board of supervisors for cause, but every such removal shall be by written order which shall be filed with the county auditor.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.220 in 1989 Code to §468.231 in 1989 Code Supplement

**468.232 Compensation.**

The members of the board of county drainage administrators shall each receive compensation at an hourly rate established by the county board of supervisors for time actually devoted to the duties of their office, and reimbursement at the rate established by section 79.9 for travel to and from meetings of, or other places of performing the duties of, the board, and other actual and necessary expenses incurred in the performance of their duties.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §455.221 in 1989 Code to §468.232 in 1989 Code Supplement

**468.233 How paid.**

The compensation and expenses of the county board of drainage administrators, for each day or portion thereof necessarily expended in the transaction of the business of a drainage or levee district, shall be paid out of the funds of the district

served. The administrators shall file with the auditor or auditors, as the case may be, itemized, verified statements of their time devoted to the business of the district and the expenses incurred. If the administrators transact business of more than one district on a given day, they shall prorate their claims for compensation proportionately among the districts served on that day, but in no case shall a member of the board of county drainage administrators claim or receive a sum in excess of seventeen dollars and fifty cents, plus actual and necessary expenses, for a single day.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.222 in 1989 Code to §468.233 in 1989 Code Supplement

**468.234 Soil and water conservation districts.**

The governing board of every drainage or levee district organized under the laws of this state shall take notice of the district plan, and shall conform to the duly adopted rules, of the soil and water conservation district or districts in which the drainage or levee district is located. However, this section does not grant authority not otherwise granted by law to the governing boards of drainage or levee districts.

89 Acts, ch 83, §53 SF 112; 89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.223 in 1989 Code to §468.234 in 1989 Code Supplement  
 Section amended

**468.235 through 468.239 Reserved.**

PART 5

COUNTY/CITY DRAINAGE DISTRICT

**468.240 Supervisors of county over two hundred thousand may establish.**

The board of a county with a population of two hundred thousand persons or more that has established a drainage district located partly within the corporate limits of a city may expend federal grants or revenue sharing money or other funds not derived from local tax levies in amounts as the board deems proper to pay any part of the cost of improvements authorized in this subchapter, parts 1 through 5. The board may issue general obligation bonds to pay any part of the cost of improvements authorized in this subchapter, parts 1 through 5. The bonds shall be issued according to the provisions of chapter 384, division III, relating to general obligation bonds for essential corporate purposes.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §455.225 in 1989 Code to §468.240 in 1989 Code Supplement

**468.241 through 468.249 Reserved.**

PART 6

DISSOLUTION OF DRAINAGE DISTRICTS

**468.250 Jurisdiction to dissolve districts and abandon or transfer improvements.**

Drainage or levee districts may be dissolved and abandoned or assimilated by the procedures prescribed by this part.

1. When any drainage or levee district is free from indebtedness and it shall appear that the necessity therefor no longer exists or that the expense of the continued maintenance of the ditch or levee is in excess of the benefits to be derived therefrom, the board of supervisors or board of trustees, as the case may be, shall have power and jurisdiction, upon petition of a majority of the landowners, who, in the aggregate, own sixty percent of all land in such district, to abandon the same and dissolve and discontinue such districts in the manner prescribed by sections 468.251 through 468.255. Nothing in this subsection shall prevent the board from eliminating land from a drainage district as permitted under section 468.188.

2. When one drainage or levee district, either intracounty or intercounty, includes within its territory all of the territory of one or more other drainage or levee districts, and it appears that one assessment and one governing body would be to the benefit of the owners and occupants of the land within the mutual jurisdiction of the overlying and the contained districts, the board of supervisors or board of trustees may effect the dissolution of a contained district and the transfer of jurisdiction and control over that contained district's improvements to the overlying district, in the manner prescribed by sections 468.256 through 468.261.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §456.1 in 1989 Code to §468.250 in 1989 Code Supplement

#### **468.251 Notice of hearing.**

Upon the filing of such petition the board shall enter an order fixing the date for hearing thereon not less than forty days from the date of the filing thereof and shall enter an order directing the county auditor, if such district is under the control of the board of supervisors, or the clerk of the board, if under the control of a board of trustees, to immediately cause notice of hearing thereon to be served on the owners of lands in such district as may then be provided by law in proceedings for the establishment of a drainage or levee district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §456.2 in 1989 Code to §468.251 in 1989 Code Supplement

#### **468.252 Hearing on petition.**

At the time set for hearing on said petition the board shall hear and determine the sufficiency of the petition as to form and substance (which petition may be amended at any time before final action thereon), and all objections filed against the abandonment and dissolution of such district. If it shall find that such district is free from indebtedness and that the necessity for the continued maintenance thereof no longer exists or that the expense of the continued maintenance of such district is not commensurate with the benefits derived therefrom, it shall enter an order abandoning and dissolving such district, which order shall be filed with the county auditor of the county or counties in which such district is situated and noted on the drainage record.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §456.3 in 1989 Code to §468.252 in 1989 Code Supplement

#### **468.253 Appeal.**

Appeal may be taken from the order of the board to the district court of the county in which such district or a part thereof is situated, in the same time and manner as appeal may be taken from an order of the board of supervisors establishing a district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §456.4 in 1989 Code to §468.253 in 1989 Code Supplement

#### **468.254 Expense—refund.**

In case there are sufficient funds on hand in such district, or there are unpaid assessments outstanding or other property belonging to such district in an amount sufficient to pay such expense, the expense of abandonment and dissolution shall be paid out of such funds or out of funds realized by the sale of such property. Where such district is free of indebtedness but there are not sufficient funds on hand or unpaid assessments outstanding or other assets to pay such expense the board shall assess such expense against the property in the district in the same proportions as the last preceding assessments of benefits. Any excess remaining to the credit of such district after sale of its assets and after payment of such expenses shall be prorated back to the property owners in the district in

the proportions according to class and benefits as last assessed. If the petition is denied, the costs of said proceedings shall be paid by the petitioning owners.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §456.5 in 1989 Code to §468.254 in 1989 Code Supplement

#### **468.255 Abandonment of rights of way.**

If a dissolution is effected pursuant to section 468.250, subsection 1, and sections 468.251 through 468.254, the rights of way of the district for all purposes of the district shall be deemed abandoned.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §456.6 in 1989 Code to §468.255 in 1989 Code Supplement

#### **468.256 Initiating dissolution of contained district.**

To initiate the dissolution of a contained district under the circumstances described in section 468.250, subsection 2:

1. The board of supervisors or board of trustees of the district proposed to be dissolved shall enter an order for the proposed dissolution of that district and the surrender of its improvements and rights of way to the overlying district.
2. The board of supervisors or board of trustees of the overlying district shall enter an order approving the proposed acceptance of those improvements and rights of way.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §456.11 in 1989 Code to §468.256 in 1989 Code Supplement

#### **468.257 Procedure for notice of hearing.**

1. The board of the overlying district shall enter an order fixing a place and a time, not less than forty days after the date of the later of the two orders required by section 468.256, for a hearing on the proposals described in the two orders.
2. The auditor, or auditors if the overlying district includes land lying in two or more counties, shall cause notice of the proposals and of the hearing to be given immediately upon the entry of an order under subsection 1. The notice must:
  - a. Include the texts of the orders entered pursuant to section 468.256, the date, time and place of the hearing, and a statement that all objections to the proposals embodied in the orders must be made in writing and filed in the office of the auditor at or before the time set for the hearing.
  - b. Be directed to all of the following:
    - (1) The owner of each tract of land or lot within the overlying district, as shown by the transfer books of the auditor's office, including railway companies having right of way in the district.
    - (2) All lienholders or encumbrancers of land within the overlying district, without naming them.
    - (3) All actual occupants of land in the overlying district, without naming individuals.
    - (4) All other persons whom it may concern.
3. Except as otherwise required by section 468.16, the notice required by this section shall be served by publication once in a newspaper of general circulation in each county in which the overlying district's land is situated. The publication shall be made not less than twenty days prior to the day set for the hearing. Proof of service shall be made by affidavit of the publisher.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §456.12 in 1989 Code to §468.257 in 1989 Code Supplement

#### **468.258 Procedure at hearing.**

The hearing shall be convened at the time and place fixed in accordance with section 468.257, subsection 1, and the procedure at the hearing shall be as prescribed by this section.

1. The board of the contained district shall first hear all objections filed against the dissolution of the district and the surrender of its improvements to the

overlying district. If, at the conclusion of that portion of the hearing, that board finds that the contained district is free of debt, that the economic benefits of the continued maintenance of that district would not be commensurate with its cost, and that it would be advantageous to dissolve and discontinue the contained district and surrender its improvements and rights of way to the overlying district, it shall enter an order dissolving the contained district and directing the surrender of its improvements and rights of way, conditioned on acceptance by the overlying district.

2. Immediately thereafter, the board of the overlying district shall hear all objections filed against the acceptance of the contained district's improvements and their maintenance. If it finds that the improvements are conducive to the drainage of surface waters from agricultural lands and all other lands in the overlying district or the protection of the lands from overflow, it shall enter an order accepting the improvements and rights of way of the contained district.

3. Orders issued pursuant to subsections 1 and 2 shall be filed with the county auditor of the county or counties in which the affected districts are situated and noted on the drainage record.

4. If at or before the time set for the hearing there have been filed with the county auditor or auditors, if either the contained or overlying district extends into more than one county, or with the board of either district, one or more remonstrances or objections to the dissolution of the contained district, or to the acceptance of that district's improvements and rights of way by the overlying district, signed by owners of land and land improvements in either district aggregating sixty percent of the total assessed value of the land in that district as shown by the taxing records in the county or counties in which that district is located, the board to which the remonstrances or objections have been made shall abandon its proposed action.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §456.13 in 1989 Code to §468.258 in 1989 Code Supplement

#### **468.259 Election in lieu of hearings.**

In lieu of the hearings provided for in section 468.258, the board of either district may call an election for the purpose of determining the dissolution of the contained district or the acceptance of that district's improvements and rights of way by the overlying district. The questions may be submitted at a regular election of the district or at a special election called for that purpose. It is not mandatory for the county commissioner of elections to conduct the elections, however the provisions of sections 49.43 to 49.47, and of subchapter III of this chapter, as they are applicable, shall govern the elections, and the question to be submitted shall be set forth in the notice of election.

1. If sixty percent or more of the votes cast are in favor of the proposed dissolution of the contained district involved, the board of that district shall enter an order dissolving the contained district and directing the surrender of its improvements and rights of way, conditioned on acceptance by the overlying district.

2. If sixty percent or more of the votes cast in the overlying district are in favor of the proposed acceptance by that district of the contained district's improvements and rights of way, the board of the overlying district shall enter an order accepting the improvements and rights of way of the contained district.

3. Orders issued pursuant to subsections 1 and 2 shall be filed with the county auditor of the county or counties in which the affected districts are situated and noted on the drainage record.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §456.14 in 1989 Code to §468.259 in 1989 Code Supplement

#### **468.260 Effect of dissolution, surrender and acceptance.**

When a contained district dissolves and surrenders its improvements and rights of way to the jurisdiction and control of an overlying district, and the overlying

district accepts those improvements and rights of way, in accordance with sections 468.256 through 468.259:

1. It is presumed that the classification of the lands which were included in the dissolved district, as previously determined by the commissioners in the classification of those lands as a part of the overlying district, remains equitable and no reclassification of the overlying district or any part of it is necessary.

2. The improvements surrendered and accepted are at all times under the supervision of the board of the overlying district, and it is the duty of that board to keep the improvements in repair as provided in section 468.126 as fully and completely as though the improvements were a part of the original construction or improvements in the overlying district.

3. It is presumed that:

*a.* The improvements surrendered and accepted are an integral part of the overlying district's improvements, and are a public benefit and conducive to the public health, convenience and welfare.

*b.* No value is taken into consideration for the existing improvements nor is credit given to the parties owning them, and they shall not be considered an asset of the district that is dissolved.

4. The original cost and the subsequent cost of improvements in the district that has been dissolved are added to and become a part of the original cost and the subsequent cost of improvements in the overlying district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §456.15 in 1989 Code to §468.260 in 1989 Code Supplement

#### **468.261 Costs borne by overlying district.**

The overlying district shall pay all costs of the proceedings held pursuant to sections 468.256 through 268.259.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §456.16 in 1989 Code to §468.261 in 1989 Code Supplement

#### **468.262 through 468.269 Reserved.**

### SUBCHAPTER II

### JURISDICTIONS

#### PART 1

#### INTERCOUNTY LEVEE OR DRAINAGE DISTRICTS

#### **468.270 Petition and bond.**

When the levee or drainage district embraces land in two or more counties, a duplicate of the petition of any owner of land to be affected or benefited by such improvement shall be filed with the county auditor of each county into which said levee or drainage district will extend, accompanied by a duplicate bond to be filed with the auditor of each of the said counties as provided when the district is wholly within one county, in an amount and with sureties approved by the auditor of the county in which the largest acreage of the district is situated, which bond shall run in favor of the several counties in which it is filed.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.1 in 1989 Code to §468.270 in 1989 Code Supplement

#### **468.271 Commissioners.**

Upon the filing of such petition in each county and the approval of such duplicate bond by the proper auditor, the board of each of such counties shall appoint a commissioner and the joint boards shall appoint a competent engineer who shall also act as a commissioner.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.2 in 1989 Code to §468.271 in 1989 Code Supplement

**468.272 Examination and report.**

The commissioners thus appointed shall examine the application and make an inspection of all the lands embraced in the proposed district and shall determine what improvements in the way of levees, ditches, drains, settling basins, or change of natural watercourse are necessary for the drainage of the lands described in the petition. Such commissioners, including the engineer, shall file a detailed report of their examination and their findings and file a duplicate thereof in the office of the auditor of each of said counties.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.3 in 1989 Code to §468.272 in 1989 Code Supplement

**468.273 Duty of engineer.**

In addition to the report of the commissioners as a whole, the engineer so appointed shall perform the same duties and in the same manner required of the engineer by subchapter I, parts 1 through 5 when the proposed district is located wholly within one county, and the engineer's surveys, plats, profiles, field notes, and reports of the engineer's surveys shall be made and filed in duplicate in each county.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.4 in 1989 Code to §468.273 in 1989 Code Supplement

**468.274 Notice.**

Immediately upon the filing of the report of the commissioners and the engineer, if the same recommends the establishment of such district, notice shall be given by the auditor of each county to the owners of all the lots and tracts of land in the auditor's own county respectively embraced within such district as recommended by the commissioners as shown by the transfer books in the office of the auditor of each of said counties, and also to the persons in actual occupancy of all the lots or tracts of land in such district, and also to each lienholder or encumbrancer of any of such lots or tracts as shown by the records of the respective counties.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.5 in 1989 Code to §468.274 in 1989 Code Supplement

**468.275 Contents of notice—service.**

Such notice shall state the time and place, when and where the boards of the several counties will meet in joint session for the consideration of said petition and the report of the commissioners and engineer thereon, and shall in other respects be the same and served in the same time and manner as required when the district is wholly within one county, except that the auditor of each county shall give notice only to the owners, occupants, encumbrancers, and lienholders of the lots and tracts of land embraced within the proposed district in the auditor's own county as shown by the records of such county.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.6 in 1989 Code to §468.275 in 1989 Code Supplement

**468.276 Claims for damages—filing—waiver.**

Any person filing objections or claiming damages or compensation on account of the construction of such improvement shall file the same in writing in the office of the auditor of the county in which the person's land is situated, at or before the time set for hearing. The person may, however, file it at the time and place of hearing. If the person shall fail to file such claim at the time specified the person shall be held to have waived the person's right thereto, but claims for land taken for right of way for any open ditch or for settling basins need not be filed.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.7 in 1989 Code to §468.276 in 1989 Code Supplement

**468.277 Organization and procedure—adjournments.**

At the time set for hearing such petition, the boards of the several counties shall meet at the place designated in said notice. They shall organize by electing a

chairperson and a secretary, and when deemed advisable may adjourn to meet at the call of such chairperson at such time and place as the chairperson may designate, or may adjourn to a time and place fixed by said joint boards. They shall sit jointly in considering the petition, the report and the recommendations of the engineer, in the same manner as if the district were wholly within one county.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.8 in 1989 Code to §468.277 in 1989 Code Supplement

#### **468.278 Tentative adoption of plans.**

The said boards by their joint action may dismiss the petition and refuse to establish such district, or they may approve and tentatively adopt the plans and recommendations of the engineer for the said district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.9 in 1989 Code to §468.278 in 1989 Code Supplement

#### **468.279 Appraisers.**

If the said boards shall adopt a tentative plan for the district, the board of each county shall select an appraiser and the several boards by joint action shall employ an engineer, and the said appraisers and engineer shall constitute the appraisers to appraise the damages and value of all right of way required for open ditches and of all lands required for settling basins.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.10 in 1989 Code to §468.279 in 1989 Code Supplement

#### **468.280 Duty of appraisers—procedure.**

The appraisers shall proceed in the same manner and make return of their findings and appraisement the same as when the district is wholly within one county, except that a duplicate thereof shall be filed in the auditor's office of each of the several counties. After the filing of the report of the appraisers, all further proceedings shall be the same as where the district is wholly within one county, except as otherwise provided.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.11 in 1989 Code to §468.280 in 1989 Code Supplement

#### **468.281 Meetings of joint boards.**

The board of supervisors of any county in which a petition for the establishment of a levee or drainage district to extend into or through two or more counties is on file, may meet with the board or boards of any other county or counties in which such petition is on file, for the purpose of acting jointly with such other board or boards in reference to said petition or any business relating to such district. Any such joint meetings held in either of the counties in which such petition is on file shall constitute a valid and legal meeting of said joint boards for the transaction of any business pertaining to said petition or to the business of such district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.12 in 1989 Code to §468.281 in 1989 Code Supplement

#### **468.282 Equalizing voting power.**

When the boards are of unequal membership, for the purpose of equalizing their voting power each member of the smallest board shall cast a full vote and each member of a larger board shall cast such fractional part of a vote as results from dividing the smallest number by such larger number.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.13 in 1989 Code to §468.282 in 1989 Code Supplement

#### **468.283 Commissioners to classify and assess.**

If the boards of the several counties acting jointly shall establish the district, they shall appoint a commission consisting of one from each county, and in addition thereto a competent engineer who shall within twenty days begin to inspect the premises and classify the lands in said district fixing the percentages

and assessments of benefits and the apportionment of costs and expenses and shall complete said work within the time fixed by the boards. The qualifications of said commissioners, their classification of lands, fixing percentages and assessments of benefits and apportionment of costs and the report thereof in all details shall be governed in all respects by the provisions of subchapter I, parts 1 through 5, for districts wholly within one county.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.14 in 1989 Code to §468.283 in 1989 Code Supplement

#### **468.284 Notice and service thereof—objections.**

Upon the filing of the report of the commissioners to classify lands, fix and assess benefits and apportion costs and expenses, the auditors of the several counties, acting jointly, shall cause notice to be served upon all interested parties of the time when and the place where the boards will meet and consider such report and make a final assessment of benefits and apportionment of costs, which notice shall be the same and served for the time and in the manner and all proceedings thereon shall be the same as provided in subchapter I, parts 1 through 5, in districts wholly within one county, except publication of notice as provided in section 468.15 shall be in each of the counties into which the district extends, and also except that said notice to be published in each of the several counties shall contain only the names of the owners of each tract of land or lot in the district located within the respective county in which said notice is to be published and the total amount of all proposed assessments on the lands located in each of the other counties into which the district extends, and except further that the objections not filed prior to the date of the hearing shall be filed with the boards at the time and place of such hearing.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.15 in 1989 Code to §468.284 in 1989 Code Supplement

#### **468.285 Levies—certificates and bonds.**

After the amount to be assessed and levied against the several tracts of land shall have been finally determined, the several boards, acting separately, and within their own counties, shall levy and collect the taxes apportioned and levied in their respective counties. They may issue warrants, improvement certificates, or bonds for the payment of the cost of such improvement within their respective counties, with the same right of landowners to pay without interest or in installments all as provided where the district is wholly within one county.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.16 in 1989 Code to §468.285 in 1989 Code Supplement

#### **468.286 Bonds or proceeds made available.**

When drainage bonds are to be issued under the provisions of section 468.285 they shall be issued at such time that they or the proceeds thereof shall be available for the use of the district at a date not later than ninety days after the actual commencement of the work on the improvement as provided in relation to districts wholly within one county.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.17 in 1989 Code to §468.286 in 1989 Code Supplement

#### **468.287 Supervising engineer.**

At the time of finally establishing the district, the boards of the several counties, acting jointly, shall employ a competent engineer to have charge and supervision of the construction of the improvement and they shall fix the engineer's compensation and the engineer shall, before entering upon said work, give a bond running to the several counties for the use and benefit of the district in the same amounts and of like tenor and effect as is provided in districts wholly within one

county. A duplicate of such bond shall be filed with the auditor of each of said counties.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.18 in 1989 Code to §468.287 in 1989 Code Supplement

#### **468.288 Duty of engineer.**

The duties of the supervising engineer shall be the same in all respects as is provided by subchapter I, parts 1 through 5, for districts wholly within one county.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.19 in 1989 Code to §468.288 in 1989 Code Supplement

#### **468.289 Notice of letting work—applicable procedure.**

If the boards, acting jointly, shall establish such district, the auditors of the several counties shall immediately thereafter, acting jointly, cause notice to be given of the time and place of the meeting of the boards for letting contracts for the construction of the improvement. The notices, bids, bonds, and all other proceedings in relation to letting contracts shall be the same as provided where the district is wholly within one county, but duplicates of contractors' bonds shall be filed with the auditor of each county.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.20 in 1989 Code to §468.289 in 1989 Code Supplement

#### **468.290 Contracts.**

All contracts made for engineering work and the work of constructing improvements of an intercounty district shall be made by written contract executed by the contractor and such person as may be authorized by the boards of the several counties and by joint resolution and shall specify the work to be done, the amount of compensation therefor and the times and manner of payment, all as provided in relation to districts wholly within one county.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.21 in 1989 Code to §468.290 in 1989 Code Supplement

#### **468.291 Monthly estimate—payment.**

The engineer in charge of the work shall furnish the contractor monthly estimates of the amount of work done on each section and the amount thereof done in each county, a duplicate of which shall be filed with the auditor of each of the several counties. Upon the filing of such statement, each auditor shall draw a warrant for the contractor or give the contractor an order directing the treasurer to deliver to the contractor improvement certificates or drainage bonds, as the case may be, in favor of the contractor for eighty percent of the amount due from the auditor's county. Drainage warrants, bonds or improvement certificates when so issued shall be in such amounts as the auditor determines not however in amounts in excess of one thousand dollars.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.22 in 1989 Code to §468.291 in 1989 Code Supplement

#### **468.292 Final settlement.**

When the work to be done on any contract is completed to the satisfaction of the supervising engineer the engineer shall so report and certify to the boards of the several counties, and the auditors of the county shall fix a day to consider said report, and all the provisions shall apply in relation to objections to said report and the approval of the same and the completion of any unfinished or abandoned work as is provided in subchapter I, parts 1 through 5, relating to completion of work and final settlement in districts wholly within one county, except that, when the completed work is accepted by the joint action of the boards of supervisors of the several counties into which the district extends such acceptance shall be certified to the auditor of each county who shall draw a warrant for the contractor or give the contractor an order directing the treasurer to deliver to the contractor

improvement certificates or drainage bonds, as the case may be, for the balance due from the portion of the district in such county.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.23 in 1989 Code to §468.292 in 1989 Code Supplement

#### **468.293 Failure of board to act.**

When the establishment of a district, extending into two or more counties, is petitioned for as hereinbefore provided and one or more of such boards fails to take action thereon, the petitioners may cause notice in writing to be served upon the chairperson of each board demanding that action be taken upon the petition within twenty days from and after the service of such notice.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.24 in 1989 Code to §468.293 in 1989 Code Supplement

#### **468.294 Transfer to district court.**

If such boards shall fail to take action thereon within the time named, or fail to agree, the petitioners may cause such proceedings to be transferred to the district court of any of the counties into which such proposed district extends by serving notice upon the auditors of the several counties within ten days after the expiration of said twenty days' notice, or after the failure of such boards to agree.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.25 in 1989 Code to §468.294 in 1989 Code Supplement

#### **468.295 Transcript, docket and trial.**

Within thirty days after completion of notice, the auditor shall, acting jointly, prepare and certify to the clerk of the district court a full and complete transcript of all proceedings had in such case. The clerk of the district court shall thereupon docket the case and same shall be triable in equity at any time after the expiration of twenty days thereafter.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.26 in 1989 Code to §468.295 in 1989 Code Supplement

#### **468.296 Decree.**

The court shall enter judgment and decree dismissing the case or establishing such district and may by proper orders and writs enforce the same.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.27 in 1989 Code to §468.296 in 1989 Code Supplement

#### **468.297 Law applicable.**

Except as otherwise stipulated in this part the provisions and procedure set forth in subchapter I, parts 1 through 5, shall govern and apply to the formation, establishment, and conduct of every levee or drainage district extending into two or more counties, the petition therefor, the giving or publication or service of notice therein, the appointment and duties of all officers or appraisers or commissioners, the making or filing of waivers, reports, plats, profiles, recommendations, notices, contracts, and papers, the classification and apportionment and assessment of lands and all other property, the taking and hearing of appeals, the issuance and delivery of warrants, bonds and assessment certificates, the payment of taxes and assessments, the making of improvements, ditches, drains, settling basins, changes, enlargements, extensions, and repairs, the inclusion of lands, and the making or performance of every other matter or thing whatsoever relevant to or in any wise connected with such joint drainage or levee district, and the rights, privileges, and duties of all persons, landowners, officers, appellants, and courts.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.28 in 1989 Code to §468.297 in 1989 Code Supplement

**468.298 Records of intercounty districts.**

A record of all proceedings of an intercounty levee or drainage district shall be maintained by the auditor of each county in which a portion of the district lies, as provided by sections 468.172 and 468.173, but the records in the office of the auditor of the county having the largest acreage in the district shall be the official records of said district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.29 in 1989 Code to §468.298 in 1989 Code Supplement

**468.299 County with largest acreage to keep funds.**

When an intercounty district has been finally established and original construction completed and final settlement made with the contractor, as provided by section 468.292, the treasurer of the county having the largest acreage of the district shall be the depository for all funds of the district and the treasurer of the other counties in which the district is situated shall periodically, at least annually, pay over all district funds received within said period to the treasurer of the county with the largest acreage, except that funds payable on improvement certificates or bonds shall be disbursed to the holders of the certificates or bonds by the treasurer of the county in which the land encumbered is located.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §457.30 in 1989 Code to §468.299 in 1989 Code Supplement

**468.300 through 468.304 Reserved.**

## PART 2

## CONVERTING INTRACOUNTY DISTRICTS INTO INTERCOUNTY DISTRICT

**468.305 Intracounty districts converted into intercounty district.**

Whenever one or more drainage districts in one county outlet into a ditch, drain, or natural watercourse, which ditch, drain, or natural watercourse is the common carrying outlet for one or more drainage districts in another county, the boards of supervisors of such counties acting jointly may by resolution, and on petition of the trustees of any one of such districts or one or more landowners therein, in either case such petition to be accompanied by a bond as provided in section 468.270, must initiate proceedings for the establishment of an intercounty drainage district by appointing commissioners as provided in section 468.271 and by requiring a bond as provided in section 468.270 and by proceeding as provided by subchapter II, part 1, and all powers, duties, limitations, and provisions of this part and subchapter II, part 1, shall be applicable thereto.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §458.1 in 1989 Code to §468.305 in 1989 Code Supplement

**468.306 Benefited land only included.**

Neither any land nor any previously organized drainage district shall be included within, or assessed for, the proposed new intercounty district unless such land or unless such previously organized district shall receive special benefits from the improvements in the proposed new intercounty district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §458.2 in 1989 Code to §468.306 in 1989 Code Supplement

**468.307 Appeal by landowner.**

Any landowner affected by the establishment of the new intercounty district may appeal to the district court of the county where the owner's land lies from the action of the joint boards in establishing the new district or in including the owner's land within it.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §458.3 in 1989 Code to §468.307 in 1989 Code Supplement

**468.308 Procedure on appeal.**

The procedure for taking such appeal and for hearing and determining it shall be that provided for similar appeals in subchapter I, parts 1 through 5.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §458.4 in 1989 Code to §468.308 in 1989 Code Supplement

**468.309 Appeal by trustees or boards.**

Trustees or boards of supervisors having charge of any previously organized district which is proposed to be included (either in whole or in part) within the new intercounty district may, in the same manner and under the same procedure appeal to the district court from the action of the joint boards in establishing the new district or in including therein the previously organized district or any part thereof.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §458.5 in 1989 Code to §468.309 in 1989 Code Supplement

**468.310 through 468.314 Reserved.**

## PART 3

## DRAINAGE DISTRICTS EMBRACING PART OR WHOLE OF CITY

**468.315 Authority to include city.**

The board of any county shall have the same power to establish a drainage district that includes the whole or any part of any city as they have to establish districts wholly outside of such cities, including assessment of damages and benefits within such cities, but no board of supervisors shall have power or authority to establish a drainage or levee district which lies wholly within the corporate limits of any city, nor in any case to establish any district for sewer purposes.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §459.1 in 1989 Code to §468.315 in 1989 Code Supplement

**468.316 Inclusion of city—notice.**

Notice of the filing of the petition for such district and the time of hearing thereon, shall set forth the boundaries of the territory included within such city and directed to the city clerk and the owners and lienholders of the property within such boundaries without naming individuals, to be served in the same manner as notices where the district is wholly outside of such city.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §459.2 in 1989 Code to §468.316 in 1989 Code Supplement

**468.317 Assessments—notice.**

When the streets, alleys, public ways, or parks or lots or parcels including railroad rights of way of any city, or city under special charter, so included within a levee or drainage district, will be beneficially affected by the construction of any improvement in such district, it shall be the duty of the commissioners appointed to classify and assess benefits to estimate and return in their report the percentage and assessment of benefits to such streets, alleys, public ways, and parks, or lots or parcels including railroad rights of way and notice thereof shall be served upon the clerk of such city, irrespective of the form of government, and upon owners of lots, parcels, and railroad rights of way so assessed.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §459.3 in 1989 Code to §468.317 in 1989 Code Supplement

**468.318 Objections—appeal.**

The council or clerk of such city or individual owners may file objections to such Percentage and assessment of benefits in the time and manner provided in case of

landowners outside such city, and they shall have the same right to appeal from the finding of the board with reference to such assessment.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §459.4 in 1989 Code to §468.318 in 1989 Code Supplement

#### **468.319 Assessments—interest.**

Such assessment as finally made shall draw interest at the same rate and from the same time as assessment against lands.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §459.5 in 1989 Code to §468.319 in 1989 Code Supplement

#### **468.320 Bonds, certificates and waivers.**

The board of supervisors and the city council shall have the same power in reference to issuing improvement certificates or drainage bonds and executing waivers on account of such assessment for benefits to streets, alleys, public ways, parks, and other lands as is herein conferred upon the board of supervisors in reference to assessment for benefits to highways.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §459.6 in 1989 Code to §468.320 in 1989 Code Supplement

#### **468.321 Funding bonds.**

Such cities may issue their funding bonds for the purpose of securing money to pay any assessment against it as provided by law.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §459.7 in 1989 Code to §468.321 in 1989 Code Supplement

#### **468.322 Jurisdiction relinquished.**

If the board of supervisors of any county at any time finds that twenty-five percent or more of the total area of any established drainage district is located within the corporate limits of any city, that the district's drains are wholly or partially constructed of sewer tile, and that the district's drain or drains are needed or being used by the city for storm sewer or drainage purposes, the board may by resolution transfer to the city control of the entire drainage district, including the portion outside the corporate limits of the city.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §459.8 in 1989 Code to §468.322 in 1989 Code Supplement

#### **468.323 Request for relinquishment.**

When a county board of supervisors elects to transfer control of a drainage district to a city, as provided in section 468.322, the resolution effecting the transfer shall state a time not less than thirty nor more than ninety days after adoption of the resolution when the transfer of control shall take effect. The resolution shall be certified to the governing body of the city and a copy thereof filed by the county auditor, who shall spread the same upon the records of the drainage district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §459.9 in 1989 Code to §468.323 in 1989 Code Supplement

#### **468.324 Duty to accept.**

It shall be the duty of the governing body of any city to accept control of and thereafter to administer a drainage district properly transferred to the city, commencing on the date specified in the resolution of the county board of supervisors certified to the governing body as provided in section 468.323, or at such later date as may be agreed to by the county board upon request of the governing body.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §459.10 in 1989 Code to §468.324 in 1989 Code Supplement

**468.325 Jurisdiction of municipality.**

After the drainage district has been taken over by the city, it shall have complete control thereof, and may use the same for any purpose that said city through its city council deems proper and necessary for the advancement of the city or its health or welfare, and the city shall be responsible for the maintenance and upkeep of said drainage district only from and after its relinquishment by the board of supervisors to the city.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §459.11 in 1989 Code to §468.325 in 1989 Code Supplement

**468.326 City council to control district.**

The council of any city acting under the provisions of this part shall have control, supervision and management of the district, and shall be vested with all of the powers which are now or may hereafter be conferred on the board of supervisors for the control, supervision and management of drainage districts under the laws of this state within the said district unless otherwise specifically provided.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §459.12 in 1989 Code to §468.326 in 1989 Code Supplement

**468.327 Trustee control.**

A district formed pursuant to this part, under the control of a city council, may be placed under the control and management of a board of trustees as provided in subchapter III of this chapter. Each trustee shall be a citizen of the United States not less than eighteen years of age and a bona fide owner of benefited land in the district for which the trustee is elected. If the owner is a family farm corporation as defined by section 172C.1, subsection 8, a business corporation organized and existing under chapter 491, 494, or 496A, or a partnership, a stockholder or officer authorized by the corporation or a general partner may be elected as a trustee of the district.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §459.13 in 1989 Code to §468.327 in 1989 Code Supplement

**468.328 through 468.334 Reserved.**

## PART 4

## HIGHWAY DRAINAGE DISTRICTS

**468.335 Establishment.**

Whenever, in the opinion of the board of supervisors, it is necessary to drain any part of any public highway under its jurisdiction, and any land abutting upon or adjacent thereto, it may proceed without petition or bond to establish a highway drainage district by proceeding in all other respects as provided in subchapter I, parts 1 through 5.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §460.1 in 1989 Code to §468.335 in 1989 Code Supplement

**468.336 Powers.**

Such district, when established, shall have the powers granted to drainage and levee districts, and all parties interested shall have the same rights so far as applicable.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §460.2 in 1989 Code to §468.336 in 1989 Code Supplement

**468.337 Initiation without petition.**

When the board of supervisors determines on its own action to proceed to the establishment of a highway drainage district, it shall do so by the adoption of a resolution of necessity to be placed upon its records, in which it shall describe in a general way the portion of any highway or highways to be included in such

district, together with the description of abutting or adjacent land and railroad rights of way to be included in such district and made subject to assessment for such improvement.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §460.3 in 1989 Code to §468.337 in 1989 Code Supplement

#### **468.338 Engineer.**

The board shall appoint a competent engineer for the district. If the county engineer is appointed, the engineer shall serve without additional compensation. In no case shall the county engineer act as a member of the assessment commission in a drainage district provided for in this part.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §460.4 in 1989 Code to §468.338 in 1989 Code Supplement

#### **468.339 Survey and report.**

The engineer shall make a survey of the proposed district and report the same to the board, being governed in all respects as provided by sections 468.11 and 468.12 and designate particularly any portion of the secondary road system, or the primary road system, or any portion of either or both of said systems, as well as all lands adjoining and adjacent thereto, including lands and rights of way of railway companies which in the engineer's judgment will be benefited by drainage of highways in such district, and which should be embraced within the boundaries of such district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §460.5 in 1989 Code to §468.339 in 1989 Code Supplement

#### **468.340 Assessment—report.**

The commission for assessment of benefits and classification of the property assessed shall determine and report:

1. The separate amount which shall be paid by the county on account of the secondary road system.
2. The separate amount which shall be paid by the state on account of the primary road system.
3. The amounts which shall be assessed against the right of way or other real estate of each railway company within such district.
4. The amounts which shall be assessed against each forty-acre tract or less within such district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §460.6 in 1989 Code to §468.340 in 1989 Code Supplement

#### **468.341 Advanced payments.**

The board on construction of the improvement may advance that portion to be collected by special assessment, the amount so advanced to be replaced as the first special assessments are collected. The board may in lieu of making advancements, issue warrants to be known as "Drainage Warrants", the warrants to bear interest at a rate not exceeding that permitted by chapter 74A payable annually from the date of issue and to be paid out of the special assessments levied, when they are collected.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §460.7 in 1989 Code to §468.341 in 1989 Code Supplement

#### **468.342 Payment from road funds.**

The amount fixed by the final order of the board of supervisors to be paid:

1. On account of the primary road system, shall be payable by the state department of transportation on due certification of the amount by the county treasurer to the state department of transportation out of the primary road fund.

2. On account of the secondary road system, is payable from county funds.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §460.8 in 1989 Code to §468.342 in 1989 Code Supplement

**468.343 Dismissal—costs.**

If such proceedings are dismissed or said improvement abandoned, all costs of such proceedings shall be paid out of the fund of the road system for the benefit of which said proceeding was initiated.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §460.9 in 1989 Code to §468.343 in 1989 Code Supplement

**468.344 Condemnation of right of way.**

When in the judgment of the board of supervisors, it is inadvisable to establish a drainage district but necessary to acquire right of way through private lands for the construction of ditches or drains as outlets for the drainage of highways, the board of supervisors may cause such right of way to be condemned by proceedings in the manner required for the exercise of the right of eminent domain as for works of internal improvement, except that no attorney fee shall be taxed, and pay the costs and expense of such condemnation from either or both of said secondary road funds.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §460.10 in 1989 Code to §468.344 in 1989 Code Supplement

**468.345 Laws applicable.**

All proceedings for the construction and maintenance of highway drainage districts except as provided for in this chapter shall be as provided for in subchapter I, parts 1 through 5, and subchapter II, parts 1 through 3.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §460.11 in 1989 Code to §468.345 in 1989 Code Supplement

**468.346 Removal of trees from highway.**

When the roots of trees located within a highway obstruct the ditches or tile drains of such highway, the board of supervisors shall remove such trees from highways, except shade or ornamental trees adjacent to a dwelling house or other farm buildings or feedlots, or any tree or trees for windbreaks upon cultivated lands consisting of sandy or other light soils.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §460.12 in 1989 Code to §468.346 in 1989 Code Supplement

**468.347 Trees outside of highways.**

When the roots of trees and hedges growing outside a highway obstruct the ditches or tile drains of any highway, the board of supervisors may acquire the right to destroy such trees in the manner provided for taking private property for public use. Ornamental trees adjacent to any dwelling, orchard trees and trees used as windbreaks for a dwelling house, outbuildings, barn or feedlots, shall be exempt from the provisions of this section.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §460.13 in 1989 Code to §468.347 in 1989 Code Supplement

**468.348 through 468.354 Reserved.**

PART 5

DRAINAGE AND LEVEE DISTRICTS WITH PUMPING STATIONS

**468.355 Authorization.**

The board of supervisors of any county or counties in which a drainage or levee district has been organized as by law provided, may establish and maintain a pumping station or stations, when and where the same may be necessary to secure a proper outlet for the drainage of the land comprising the district or any portion

thereof, and the cost of construction and maintenance of said pumping station or stations shall be levied upon and collected from the lands in the district benefited by such pumping station or stations, in the same manner as provided for in the construction and maintenance of said districts.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.1 in 1989 Code to §468.355 in 1989 Code Supplement

#### **468.356 Petition—procedure—emergency pumping station.**

Such pumping station shall not be established or maintained unless a petition therefor shall be presented to the board signed by not less than one-third of the owners of lands benefited thereby. The lands benefited by such pumping station shall be determined by the board on said petition and report of the engineer, and such other evidence as it may hear. No additional land shall be taken into any such drainage district after the improvements therein have been substantially completed, unless one-third of the owners of the land proposed to be annexed have petitioned therefor or consented in writing thereto.

However, the board of supervisors may install a temporary portable pumping station to remove flood waters in an emergency. The board of supervisors shall levy and collect the cost of the purchase, operation and maintenance of the pumping station from the lands in the district benefited by the pumping station in the same manner as provided for in the construction and maintenance of a drainage or levee district. For the purpose of this paragraph an emergency occurs when ponded or standing water does not freely flow to the outlet ditch and the capacity of the outlet ditch is not fully used.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.2 in 1989 Code to §468.356 in 1989 Code Supplement

#### **468.357 Additional pumping station.**

After the establishment of a drainage district, including a pumping plant, and before the completion of the improvement therein, the board or boards may, if deemed necessary to fully accomplish the purposes of said improvement, by resolution authorize the establishment and maintenance of such additional pumping station or stations as the engineer may recommend, and if a petition is filed by one-third of the owners of land within such district asking the establishment of such pumping plant or plants, the board or boards must direct the engineer to investigate the advisability of the establishment thereof and upon the report of said engineer the board or boards shall determine whether such additional pumping plant or plants shall be established.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.3 in 1989 Code to §468.357 in 1989 Code Supplement

#### **468.358 Transfer of pumps.**

If the board or boards determine that additional pumping plant or plants shall be established and maintained, a pump or pumps may be removed from any pumping station already established and may be installed in any such additional plant, if such removal can be made without injuring the efficient operation of the plant from which removed.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.4 in 1989 Code to §468.358 in 1989 Code Supplement

#### **468.359 Costs.**

1. The cost of the establishment of such additional pumping plant or plants shall be paid in the same manner and upon the same basis as is provided for the cost of the original improvement.

2. The board of supervisors or the board of trustees, as the case may be, where the district has been established and the original improvement constructed, may proceed with the further improvement of the original project in the manner provided in section 468.126, provided, however, that the cost of such further

improvement does not exceed twenty-five percent of the sum of the original cost to the district and the cost of subsequent improvements, including all federal contributions.

For the purpose of this section the word "improvement" shall include the construction, reconstruction, enlargement and relocation of levees and acquisition of rights of way therefor.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.5 in 1989 Code to §468.359 in 1989 Code Supplement

#### **468.360 Dividing districts.**

When a drainage district has been created and more than one pumping plant is established therein, the board or boards of supervisors may, and upon petition of one-third of the owners of land within said district shall, appoint an engineer to investigate the advisability of dividing said district into two or more districts so as to include at least one pumping plant in each of such districts.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.6 in 1989 Code to §468.360 in 1989 Code Supplement

#### **468.361 Notice—publication.**

If the engineer recommends such division the board of supervisors shall fix a time for hearing upon the question of such division and shall publish notice directed to all whom it may concern of the time and place of such hearing, for the time and in the manner as is required for the publication of notice of the establishment of said district, except that said notice need not name the owners and lienholders.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.7 in 1989 Code to §468.361 in 1989 Code Supplement

#### **468.362 Hearing—jurisdiction of divided districts.**

At the time fixed, the board shall determine the advisability of such division and shall make such order with reference thereto as shall be deemed proper, having consideration for the interests of all concerned. If such division is made, the board or boards having jurisdiction of the original district shall retain jurisdiction of the new districts created by such division for the purpose of collecting assessments theretofore made and making such additional assessments as are necessary to pay the obligations theretofore contracted. For all other purposes, each division shall be under the jurisdiction of the board or boards of supervisors which would have had jurisdiction thereof if originally established as an independent district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.8 in 1989 Code to §468.362 in 1989 Code Supplement

#### **468.363 Division in other cases.**

After a levee or drainage district operating a pumping plant shall have been established and the improvement constructed and accepted, if it shall become apparent that the lands can be more effectually drained, managed, or controlled by a division thereof, then the said board or boards, or trustees, may, and if the district is divided by a stream, they shall, divide the district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.9 in 1989 Code to §468.363 in 1989 Code Supplement

#### **468.364 Assessments not affected—maintenance tax.**

Each district after the division shall be conducted as though established originally as a district. Nothing herein shall affect the legality or collection of any assessments levied before the division; but the maintenance tax, if any, shall be divided in proportion to the amount paid in by each district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.10 in 1989 Code to §468.364 in 1989 Code Supplement

**468.365 Election and apportionment of trustees.**

If said district, before the division was made, was under the control and management of trustees, then each trustee shall continue to serve in the district in which the trustee is situated, and other trustees shall be elected in each new district. The election for said new trustees shall be called by the old board of trustees in each district within ten days after said division is made and shall be conducted as provided for the election of trustees.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.11 in 1989 Code to §468.365 in 1989 Code Supplement

**468.366 Settling basin—condemnation.**

If, before a district operating a pumping plant is completed and accepted, it appears that portions of the lands within said district are wet or nonproductive by reason of the floods or overflow waters from one or more streams running into, through, or along said district and that said district or some other district of which such district shall have formed a part, shall have provided a settling basin to care for the said floods and overflow waters of said stream or watercourse, but no channel to said settling basin has been provided, said board or boards are hereby empowered to lease, buy, or condemn the necessary lands within or without the district for such channel. Proceedings to condemn shall be as provided for the exercise of the right of eminent domain.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.12 in 1989 Code to §468.366 in 1989 Code Supplement

**468.367 Funding bonds.**

When the owners of ten percent of the land in a drainage or levee district having and operating a pumping station shall petition the board of supervisors to extend the time of payment of the taxes assessed against the lands within said district for a period not exceeding twenty years, under such rules and regulations as said board may direct, the interest on such assessments to be paid annually the same as other taxes levied against the property, not less than one-twentieth of the principal of said extended tax to be paid each year until the entire tax is paid, and the lien of such tax to continue until fully paid, the board of supervisors may settle, adjust, renew, or extend the legal indebtedness of such district as shown by the assessments levied against the lands therein whether evidenced by certificates, warrants, bonds, or judgments by refunding all such indebtedness and issuing coupon bonds therefor when such indebtedness amounts to one thousand dollars or upwards, but for no other purpose.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.13 in 1989 Code to §468.367 in 1989 Code Supplement

**468.368 Form of bonds.**

Such bonds shall be issued in sums of not less than one hundred dollars or more than one thousand dollars each, running not more than twenty years, bearing interest not exceeding that permitted by chapter 74A, payable annually or semiannually, and shall be substantially in the form provided by law for funding bonds issued for drainage purposes.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.14 in 1989 Code to §468.368 in 1989 Code Supplement

**468.369 Formal execution.**

Such bonds shall be numbered consecutively, signed by the chairperson of the board of supervisors, attested by the county auditor. The interest coupons attached thereto shall be executed in the same manner.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.15 in 1989 Code to §468.369 in 1989 Code Supplement

**468.370 Resolution—requisites—record.**

All bonds issued under the provisions of this part shall be issued pursuant to and in conformity with a resolution adopted by the board of supervisors, which shall specify the amount authorized to be issued, the purpose for which issued, the rate of interest they shall bear and whether payable annually or semiannually, the place where the principal and interest shall be payable and when it becomes due, and such other provisions not inconsistent with law in reference thereto as the board of supervisors shall think proper, which resolution shall be entered of record upon the minutes of the proceedings of the said board and a complete copy thereof printed on the back of each bond, which resolution shall constitute a contract between the drainage district and the purchasers or holders of said bonds.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §461.16 in 1989 Code to §468.370 in 1989 Code Supplement

**468.371 Registration.**

When bonds have been executed as aforesaid they shall be delivered to the county treasurer and the treasurer's receipt taken therefor. The county treasurer shall register the same in a book provided for that purpose, which shall show the number of each bond, its date, date of sale, amount, date of maturity, and the name and address of the purchaser, and if exchanged what evidences of debt were received therefor, which record shall at all times be open to the inspection of the owners of property within the district. The treasurer shall thereupon certify on the back of each bond as follows:

This bond duly and properly registered in my office this ..... day of ....., 19 .....

.....  
Treasurer of the county of  
.....

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §461.17 in 1989 Code to §468.371 in 1989 Code Supplement

**468.372 Liability of treasurer—reports.**

The treasurer shall stand charged on the treasurer's official bond with all bonds so delivered to the treasurer and the proceeds thereof. The treasurer shall report under oath to the board of supervisors, at each first regular session thereof in each month, a statement of all such bonds sold or exchanged by the treasurer since the treasurer's last report and the date of such sale or exchange and when exchanged a description of the indebtedness for which exchanged.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §461.18 in 1989 Code to §468.372 in 1989 Code Supplement

**468.373 Sale—application of proceeds.**

The county treasurer shall, under a resolution and the direction of the said county board of supervisors, sell the bonds for cash on the best available terms or exchange them on like terms for a legal indebtedness of the said district evidenced by bonds, warrants, or judgments outstanding at the date of the passage of the resolution authorizing the issue thereof, and the proceeds shall be applied and exclusively used for the purpose for which said bonds are issued. In no case shall they be sold or exchanged for a less sum than their face value and all interest accrued at the date of sale or exchange. After registration the treasurer shall deliver said bonds to the purchaser thereof and when exchanged for indebtedness of said district shall at once cancel all warrants or bonds or secure proper credits therefor on judgments.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §461.19 in 1989 Code to §468.373 in 1989 Code Supplement

**468.374 Levy.**

Drainage districts issuing funding or refunding bonds under this part shall levy taxes for the payment of the principal and interest thereof, where there has not been a prior levy covering same, in accordance with the provisions of the law relating to taxation.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.20 in 1989 Code to §468.374 in 1989 Code Supplement

**468.375 Scope of Act.**

Refunding bonds for the purposes set out in this part may be issued to pay off and take up bonds issued in payment for drainage improvements under prior laws or to refund any part thereof. Bonds thus issued shall substantially conform to the provisions of the law relating to drainage bonds and the face amount thereof shall be limited to the amount of the unpaid assessments, with interest thereon, applicable to the payment of the bonds so taken up.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.21 in 1989 Code to §468.375 in 1989 Code Supplement

**468.376 Funds available to pay bonds.**

When refunding bonds shall be issued to pay for drainage improvements under the provisions of this part, all special assessments, taxes, and sinking funds applicable to the payment of such bonds previously issued shall be applicable in the same manner and the same extent to the payment of the refunding bonds issued hereunder, and all the powers and duties to levy and collect special assessments and taxes or create liens upon property shall continue until all refunding bonds shall be paid.

The drainage district shall collect the special assessments out of which the said bonds are payable and hold the same separate and apart in trust for the payment of said refunding bonds but the provisions of this part shall not apply to assessments or bonds adjudicated to be void.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.22 in 1989 Code to §468.376 in 1989 Code Supplement

**468.377 Limitation of actions.**

No action shall be brought questioning the validity of any of the bonds authorized by this part from and after three months from the time the same are ordered issued by the proper authorities.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.23 in 1989 Code to §468.377 in 1989 Code Supplement

**468.378 Bankruptcy proceedings.**

All drainage districts with pumping plant and levee, which have power to incur indebtedness, through action of their own governing bodies are hereby authorized to proceed under and take advantage of all laws enacted by the Congress of the United States under the federal bankruptcy powers, which laws have for their object the relief of municipal indebtedness, including 48 Stat. L. ch 345, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto", approved May 24, 1934, and the officials and governing bodies of such drainage, pumping plant and levee districts, are authorized to adopt all proceedings and to do any and all acts necessary or convenient to fully avail such drainage, pumping plant, and levee districts, of the provisions of such Acts of Congress.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.24 in 1989 Code to §468.378 in 1989 Code Supplement

**468.379 Part applicable to districts with pumping stations.**

The provisions of this part so far as applicable shall apply to all levee districts maintaining levees for the protection of any drainage district or districts having pumping stations.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.25 in 1989 Code to §468.379 in 1989 Code Supplement

**468.380 Construction near levee prohibited.**

No person, firm or corporation shall hereafter erect, alter, or maintain any building or other structure, except necessary public utility structures, or construct, alter, or maintain any ditch, or remove any earth within three hundred feet of the center line of any levee maintained by a drainage or levee district with pumping stations without first securing permission to so do from the governing board of said drainage or levee district with pumping stations. Such permission may be granted at any regular meeting thereof, and after written application is made therefor upon the form prescribed by said governing board.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.26 in 1989 Code to §468.380 in 1989 Code Supplement

**468.381 Penalty.**

Every person who shall violate any provisions of this part shall be guilty of a misdemeanor punishable by a fine of not more than one hundred dollars, and in default of payment thereof, by imprisonment in the county jail for not more than thirty days.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.27 in 1989 Code to §468.381 in 1989 Code Supplement

**468.382 Action to restrain or abate.**

In the event that any building or other structure, or any ditch is constructed, altered or maintained, or any earth removed in violation of any provisions of this part, the governing board of said drainage or levee district with pumping stations maintaining said levee, may institute an appropriate action or proceeding to prevent such unlawful construction, alteration, or maintenance, or earth removal and to restrain, correct, or abate such violation, and may by petition duly verified, setting forth the facts, apply to the district court for an order enjoining all persons, firms or corporations from such construction, alteration, maintenance, or earth removal, until the entry of the final judgment or order.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.28 in 1989 Code to §468.382 in 1989 Code Supplement

**468.383 Liability for damage.**

In addition to all other penalties contained herein, any person, firm or corporation who shall construct, alter or maintain any building, other structure, or any ditch, or remove earth, in violation of this part, shall be liable to the drainage or levee district with pumping stations maintaining said levee, for all damage sustained by the drainage or levee district resulting from the violation, and in the event of flood, or other emergency so declared by resolution of the governing body, any building or other structure, or ditch so constructed without permission of the governing board, as required herein, and within three hundred feet of the center line of any levee, may be removed, or the ditch filled in, without prior notice thereof to the owner.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §461.29 in 1989 Code to §468.383 in 1989 Code Supplement

**468.384 through 468.389 Reserved.**

## PART 6

## DRAINAGE DISTRICTS IN CONNECTION WITH UNITED STATES LEVEES

**468.390 United States levees—co-operation of board.**

In any case where the United States has built or shall build a levee along or near the bank of a navigable stream forming a part of the boundary of this state, the board of supervisors of any county through which the same may pass shall have the power to aid in procuring the right of way for and maintaining said levee, and providing a system of internal drainage made necessary or advisable by the construction thereof. Such improvement shall be presumed to be conducive to the public health, convenience, welfare, or utility.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §466.1 in 1989 Code to §468.390 in 1989 Code Supplement

**468.391 Manner of co-operation.**

Any United States government levee under the conditions mentioned in section 468.390 may be taken into consideration by the board as a part of the plan of any levee or drainage district and improvements therein, and such board may, by agreement with the proper authorities of the United States government, provide for payment of such just and equitable portion of the costs of procuring the right of way and maintenance of such levee as shall be conducive to the public welfare, health, convenience, or utility.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §466.2 in 1989 Code to §468.391 in 1989 Code Supplement

**468.392 Report of engineer—payment authorized.**

In the proceedings to establish such a district the engineer shall set forth in the engineer's report, separately from other items, the amount of the cost for the right of way of such levee, of constructing and maintaining the same; and if the plan is approved and the district finally established in connection with such levee, the board shall make a record of any such co-operative arrangement and may use such part of the funds of the district as may be necessary to pay the amount so agreed upon toward the right of way and maintenance of such levee.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §466.3 in 1989 Code to §468.392 in 1989 Code Supplement

**468.393 Costs assessed.**

If said district is established, the entire costs and expenses incurred under this part shall be assessed against and collected from the lands lying within such district, by the levy of a rate upon the assessable value of the land and improvements within such district, sufficient to raise the required sum; provided the board may, in their discretion, classify the land within such district and graduate the tax thereon, as provided in subchapter I.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §466.4 in 1989 Code to §468.393 in 1989 Code Supplement

**468.394 Annual installments.**

If the proposed improvement is the maintenance of a levee, the amount collected in any one year shall not exceed three dollars and thirty-seven and one-half cents per thousand dollars of the assessment valuation, which said assessment shall be levied at a level rate on the assessable value of the said lands, improvements, easements, and railroads within the district. If the amount necessary to pay for the improvement exceeds said sum, it shall be levied and collected in annual installments of twenty or less. For all other improvements, the board shall levy a rate sufficient to pay for the same, and may, at their discretion, make the same payable in annual installments of twenty or less.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §466.5 in 1989 Code to §468.394 in 1989 Code Supplement

### **468.395 Collection of tax.**

The assessment required under sections 468.393 and 468.394 shall be made by the board of supervisors at the time of levying general taxes, after the work has been authorized, and the same shall be entered on the records of the board of supervisors, then entered on the tax books by the county auditor as drainage taxes, and shall be collected by the county treasurer at the same time, in the same manner, and with the same penalties, as general taxes; and if the same is not paid the county treasurer shall sell all such lands upon which such assessment remains unpaid, at the same time, and in the same manner, as is now by law provided for the sale of lands for delinquent taxes, including all steps up to the execution and delivery of the tax deed for the same. The landowners shall take notice of and pay such assessments without other or further notice than such as is provided for in this part. The funds realized from such assessments shall constitute the drainage fund, as contemplated in this part, and shall be disbursed on warrants drawn against that fund by the county auditor, on the order of the board of supervisors.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §466.6 in 1989 Code to §468.395 in 1989 Code Supplement

### **468.396 Cost of maintaining.**

The board of supervisors shall have the right and power to keep and maintain any such levee, ditches, drains, or system of drainage, either in whole or in part, established under sections 468.390 through 468.395, as may in their judgment be required, and to levy the expense thereof upon the real estate within such drainage district as herein provided for, and collect and expend the same; provided, however, that no such work which shall impose a tax exceeding three dollars and thirty-seven and one-half cents per thousand dollars on the assessable value of the lands and improvements within the district shall be authorized by them, unless the same is first petitioned for and authorized in substantially the manner required by this part for the inauguration of new work except that if such work is of the kinds contemplated by section 468.126, and the cost thereof is within the limitations of said section, or is of the kinds contemplated by section 468.188, and the cost thereof is within the limitations of said section, then the provisions of section 468.126 or section 468.188 shall supersede the limitations of this section.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §466.7 in 1989 Code to §468.396 in 1989 Code Supplement

### **468.397 Laws applicable.**

In the establishment and maintenance of levee and drainage districts in co-operation with the United States as in this part provided, all the proceedings in the filing and the form and substance of the petition, assessment of damages, appointment of an engineer, the engineer's surveys, plats, profiles, and report, notice of hearings, filing of claims and objections, hearings, appointment of commissioners to classify lands, assess benefits, and apportion costs and expenses, report, notice and hearing on the report, the appointment of a supervising engineer, the engineer's duties, the letting of work and making contracts, payment for work, levy and collection of drainage or levee assessments and taxes, the issue of improvement certificates and drainage or levee bonds, the taking of appeals and the manner of trial of appeals, and all other proceedings relating to the district shall be as provided in subchapter I, subchapter II, parts 1 through 5, subchapter III, subchapter IV, parts 1 and 2, and subchapter V except as otherwise in this part provided.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §466.8 in 1989 Code to §468.397 in 1989 Code Supplement

### **468.398 and 468.399 Reserved.**

PART 7

INTERSTATE DRAINAGE DISTRICTS

**468.400 Co-operation—procedure.**

When proceedings for the drainage of lands bordering upon the state line are had and the total cost of constructing the improvement in this state, including all damage, has been ascertained, and the engineer in charge, before the final establishment of the district, reports that the establishment and construction of such improvement ought to be jointly done with like proceedings for the drainage of lands in the same drainage area in such an adjoining state and that drainage proceedings are pending in such state for the drainage of such lands, the said authorities of this state may enter an order continuing the hearing on the establishment of such district to a fixed date, of which all parties shall take notice.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §467.1 in 1989 Code to §468.400 in 1989 Code Supplement

**468.401 Agreement as to costs.**

The board shall have power, when the total cost, including damages, of constructing the improvement in such other state has been ascertained by the authorities of such other state, to enter into an agreement as to the separate amounts which the property owners of each state should in equity pay toward the construction of the joint undertaking. When such amount is thus determined, the board or boards having jurisdiction in this state shall enter the same in the minutes of their proceedings and shall proceed therewith as though such amount to be paid by the portion of the district in this state had been originally determined by them as the cost of constructing the improvement in this state.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §467.2 in 1989 Code to §468.401 in 1989 Code Supplement

**468.402 Contracts let by joint agreement.**

When the bids for construction are opened, unless the construction work on each side of the line can go forward independently, no contract shall be let by the authorities in this state, unless the acceptance of a bid or bids for the construction of the whole project is first jointly agreed upon by the authorities of both states.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §467.3 in 1989 Code to §468.402 in 1989 Code Supplement

**468.403 Separate contracts.**

The contract or contracts for the construction of that portion of the improvement within this state shall be entirely distinct and separate from the contract or contracts let by the authorities of the neighboring state; but the aggregate amount of the contract or contracts for the construction of the work within this state shall not exceed an amount equal to the amount of the benefits assessed in this state including damages and other expenses.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §467.4 in 1989 Code to §468.403 in 1989 Code Supplement

**468.404 Conditions precedent.**

No contract shall be let until the improvement shall be finally established in both states, and after the final adjustment in both states of damages and benefits. No bonds shall be issued until all litigation in both states arising out of said proceedings has been finally terminated by actual trial or agreements, or the expiration of all right of appeal.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §467.5 in 1989 Code to §468.404 in 1989 Code Supplement

**468.405 Assessments, bonds and costs—limitation.**

All proceedings except as provided in this part in relation to the establishment, construction, and management of interstate drainage districts shall be as pro-

vided for the establishment and construction of districts wholly within this state as provided in subchapter I. All such proceedings shall relate only to the lands of such district which are located wholly within this state. Boards having jurisdiction in this state may make just and equitable agreements with like authorities in such adjoining state for the joint management, repair, and maintenance of the entire improvement, after the establishment and completed construction thereof.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §467.6 in 1989 Code to §468.405 in 1989 Code Supplement

#### **468.406 through 468.499 Reserved.**

### SUBCHAPTER III

#### MANAGEMENT OF DRAINAGE OR LEVEE DISTRICTS BY TRUSTEES

#### **468.500 Trustees authorized.**

In the manner provided in this chapter, any drainage or levee district in which the original construction has been completed and paid for by bond issue or otherwise, may be placed under the control and management of a board of three trustees to be elected by the persons owning land in the district that has been assessed for benefits.

A district under the control of a city council as provided in subchapter II, part 3, may be placed under the control and management of a board of trustees by the city council following the procedures provided in this subchapter for the county board of supervisors.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.1 in 1989 Code to §468.500 in 1989 Code Supplement

#### **468.501 Petition.**

A petition shall be filed in the office of the auditor signed by a majority of the persons including corporations owning land within the district assessed for benefits.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.2 in 1989 Code to §468.501 in 1989 Code Supplement

#### **468.502 Election.**

The board, at the next regular, adjourned, or special session shall canvass the petition and if signed by the requisite number of landowners, it shall order an election to be held at some convenient place in the district not less than forty nor more than sixty days from the date of such order, for the election of three trustees of such district. It shall appoint from the freeholders of the district who reside in the county or counties, three judges and two clerks of election. It shall not be mandatory for the county commissioner of elections to conduct elections held pursuant to this subchapter, but they shall be conducted in accordance with the provisions of chapter 49 where not in conflict with this subchapter.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.3 in 1989 Code to §468.502 in 1989 Code Supplement

#### **468.503 Intercounty district.**

If the district extends into two or more counties, a duplicate of the petition shall be filed in the office of the auditor of each county. The boards of supervisors shall, within thirty days after the filing of such petition, meet in joint session and canvass the same, and if found to be signed by a majority of the owners of land in the district assessed for benefits, they shall by joint action order such election and appoint judges and clerks of election as provided in section 468.502.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.4 in 1989 Code to §468.503 in 1989 Code Supplement

**468.504 Election districts.**

When a petition has been filed for the election of trustees to manage a district containing three thousand acres or more, the board, or, if the district extends into more than one county, the boards of such counties by joint action, shall, before the election, divide the district into three election districts for the purpose of securing a proper distribution of trustees in such district, and such division shall be so made that each election district will have substantially equal voting power and acreage, as nearly as may be. After such division is made there shall be elected one trustee for each of said election districts, but at such election all the qualified voters for the entire district shall be entitled to vote for each trustee. The division here provided for shall be for the purposes only of a proper distribution of trustees in the district and shall not otherwise affect said district or its management and control.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.5 in 1989 Code to §468.504 in 1989 Code Supplement

**468.505 Record and plat of election districts.**

At the time of making a division into election districts, as provided in section 468.504, the board or boards shall designate by congressional divisions, subdivisions, metes and bounds, or other intelligible description, the lands embraced in each election district, and the auditor, or auditors if more than one county shall make a plat thereof in the drainage record of the district indicating thereon the boundary lines of each election district, numbering them, one, two, and three, respectively.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.6 in 1989 Code to §468.505 in 1989 Code Supplement

**468.506 Eligibility of trustees.**

Each trustee shall be a citizen of the United States not less than eighteen years of age, and one of the following:

1. The bona fide owner of agricultural land in the election district for which the trustee is elected, and a resident of the county in which that district is located or of a county which is contiguous to or corners on that county.

2. The bona fide owner of nonagricultural land in the election district for which the trustee is elected, and a resident of that district. This subsection applies only when the election district is wholly within the corporate limits of a city.

3. A stockholder of a family farm corporation as defined in section 172C.1, subsection 8, which owns land in the election district who is a resident of the county in which that district is located or of a county which is contiguous to or corners on that county.

4. In a district which is a levee and drainage district which has eighty-five percent of its acreage within the corporate limits of a city and has been under the control of a city under subchapter II, part 3, a bona fide owner of benefited land in the district. If the owner is a family farm corporation as defined by section 172C.1, subsection 8, a business corporation organized and existing under chapter 491, 494, or 496A, or a partnership, a stockholder or officer authorized by the corporation or a general partner may be elected as a trustee of the district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.7 in 1989 Code to §468.506 in 1989 Code Supplement

**468.507 Notice of election.**

The board, or, if in more than one county, the boards acting jointly, shall cause notice of said election to be given, setting forth the time and place of holding the same and the hours when the polls will open and close. Such notice shall be published for two consecutive weeks in a newspaper in which the official

proceedings of the board are published in the county, or if the district extends into more than one county, then in such newspaper of each county. The last of such publications shall not be less than ten days before the date of said election.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.8 in 1989 Code to §468.507 in 1989 Code Supplement

#### **468.508 Assessment to determine right to vote.**

Before any election is held, the election board shall obtain from the county auditor or auditors a certified copy of so much of the record of the establishment of such district as will show the lands embraced therein, the assessment and classification of each tract, and the name of the person against whom the same was assessed for benefits, and the present record owner, and such certified record shall be kept by the trustees after they are elected, for use in subsequent elections. They shall, preceding each subsequent election, procure from the county auditor or auditors additional certificates showing changes of title of land assessed for benefits and the names of the new owners.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.9 in 1989 Code to §468.508 in 1989 Code Supplement

#### **468.509 New owner entitled to vote.**

Anyone who has acquired ownership of assessed lands since the latest certificate from the auditor shall be entitled to vote at any election if the person presents to the election board for its inspection at the time the person demands the right to vote evidence showing that the person has title.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.10 in 1989 Code to §468.509 in 1989 Code Supplement

#### **468.510 Qualifications of voters.**

Each landowner eighteen years of age or over without regard to sex and any railway or other corporation owning land in said district assessed for benefits shall be entitled to one vote only, except as provided in section 468.511.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.11 in 1989 Code to §468.510 in 1989 Code Supplement

#### **468.511 Votes determined by assessment.**

1. When a petition asking for the right to vote in proportion to assessment of benefits at all elections for any purpose thereafter to be held within said district, signed by a majority of the landowners owning land within said district assessed for benefits, is filed with the board of trustees, then, in all elections of trustees thereafter held within said district, any person whose land is assessed for benefits without regard to age, sex, or condition shall be entitled to one vote for each ten dollars or fraction thereof of the original assessment under the current classification against the land actually owned by the person in said district at the time of the election, but in order to have such ballot counted for more than one vote the voter shall write the voter's name upon the ballot. The vote of any landowner of the district may be cast by absent voters ballot as provided in chapter 53 except that the form of the applications for ballots, the voters' affidavits on the envelopes, and the endorsement of the carrier envelope for preserving the ballot shall be substantially in the form provided in subsections 2, 3 and 4, below. Application blanks, envelopes and ballots shall be provided by and submitted to the office of the county auditor in which the election is held. The cost of such blanks, envelopes, ballots and postage shall be paid by the district. For the purpose of this subchapter all landowners of the district shall be considered qualified voters, regardless of their place of residence.

2. For the purpose of this subchapter, applications for ballots shall be made on blanks substantially in the following form:

Application for ballot to be voted at the ..... (Name of District)  
District Election on ..... (Date)

State of .....  
.....County ss.

I, ..... (Applicant), do solemnly swear that I am a landowner in the ..... (Name of District) District and that I am a duly qualified voter entitled to vote in said election, and that on account of ..... (business, illness, residence outside of the county, etc.) I cannot be at the polls on election day, and I hereby make application for an official ballot or ballots to be voted by me at such election, and that I will return said ballot or ballots to the officer issuing same before the day of said election.

Signed .....

Date .....  
Residence (street number if any) .....  
City ..... State .....

Subscribed and sworn to before me this ..... day of ....., A.D. 19 .....

3. For the purpose of this subchapter, the affidavit on the reverse side of the envelopes used for enclosing the marked ballots shall be substantially as follows:

State of .....  
..... County ss.

I, ..... (Applicant), do solemnly swear that I am a landowner in the ..... (Name of District) District and that I am a duly qualified voter to vote in the election of trustees of said district and that I shall be prevented from attending the polls on the day of election because of ..... (business, illness, residence outside of the county, etc.) and that I have marked the enclosed ballot in secret.

Signed .....

Subscribed and sworn to before me this ..... day of ....., A.D. 19 ....., and that I hereby certify that the affiant exhibited the enclosed ballot to me unmarked; that the affiant then in my presence and in the presence of no other person and in such manner that I could not see the affiant's vote, marked such ballot, enclosed and sealed the same in this envelope; and that the affiant was not solicited or advertised by me for or against any candidate or measure.

.....  
.....  
(Official Title)

4. For the purposes of this subchapter, upon receipt of the ballot, the auditor shall at once enclose the same, unopened, together with the application made by the voter in a large carrier envelope, securely seal the same, and endorse thereon over the auditor's official signature, the following:

- a. Name of the district in which the voter is a landowner.
- b. Date of the election for which the ballot is cast.
- c. Location of the polling place at which the ballot would be legally and properly cast if voted in person.
- d. Names of the judges of the election of that polling place, and the statement that this envelope contains an absent voters ballot and must be opened only at the polls on election day while said polls are open.

**468.512 Vote by agent.**

Except where the provisions of section 468.511, providing for vote in proportion to assessment are invoked, any person or corporation owning land or right of way within the district and assessed for benefits may have the person's or the corporation's vote cast by the person's or the corporation's agent or proxy authorized to cast such vote by a power of attorney signed and acknowledged by such person or corporation, and filed before such vote is cast in the auditor's office of the county in which such election is held. Every such power of attorney shall specify the particular election for which it is to be used, indicating the day, month, and year of such election, and shall be void for all elections subsequently held. The vote of the owner of any land in a drainage or levee district in any election, where the vote is not determined by assessment, may be cast by absent voters ballot in the same manner and form and subject to the same rights and restrictions as is provided in section 468.511 relating to vote by absentee ballot when votes are determined by assessment.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.13 in 1989 Code to §468.512 in 1989 Code Supplement

**468.513 Vote of minor or mentally ill.**

The vote of any person who is a minor, mentally ill, or under other legal incompetency shall be cast by the parent, guardian, or other legal representative of such minor, mentally ill, or other incompetent person. The person casting such vote shall deliver to the judges and clerks of election a written sworn statement giving the name, age, and place of residence of such minor, mentally ill, or other incompetent person, and any false statement knowingly made to secure permission to cast such vote shall render the party so making it guilty of the crime of perjury.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.14 in 1989 Code to §468.513 in 1989 Code Supplement

**468.514 Ballots—petition for printed ballots.**

Candidates for drainage district trustee shall have their names placed on printed ballots provided a petition therefor is signed by ten qualified electors of the district and filed with the clerk of the board at least twenty-five days but not more than sixty-five days before the election. Space shall also be provided on the ballot for write-in votes.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.15 in 1989 Code to §468.514 in 1989 Code Supplement

**468.515 Candidates voted for.**

Each qualified voter for the whole district shall be entitled to vote for one candidate for each district for which a trustee is to be elected.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.16 in 1989 Code to §468.515 in 1989 Code Supplement

**468.516 Election—canvass of votes—returns.**

On the day designated for said election the polls shall open at one o'clock p.m. and remain open until five o'clock p.m. If no convenient polling place is to be found within the district, the election may be held at some convenient place outside the district. The judges of election shall canvass the vote and certify the result, and deposit with the auditor the ballots cast, together with the pollbooks showing the names of the voters; but if there is more than one county in the district, the returns shall be filed with the auditor of the county having the greatest acreage of said district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.17 in 1989 Code to §468.516 in 1989 Code Supplement

**468.517 Canvass—certificates of election.**

The canvass of the returns by the board or boards of supervisors shall be on the next Monday following the election. If the district is in more than one county, the board of supervisors of the county with the greatest acreage in the district shall canvass the vote. The board of supervisors of the other counties in which the district is located may attend and participate in the canvass of the returns. It or they shall make a return of the results of the canvass to the auditor, who shall issue certificates to the trustees elected, and when the district extends into more than one county, then the auditor with whom the election returns were filed shall issue the certificates and certify an abstract of the canvass to each other county in which the district is located.

89 Acts, ch 126, §2, 3 SF479  
 Transferred from §462.18 in 1989 Code to §468.517 in 1989 Code Supplement

**468.518 Tenure of office.**

The trustees so elected shall hold office until the fourth Saturday in January next succeeding their election and until their successors are elected and qualify. On the third Saturday in the January next succeeding their original election, an election shall be held at which three trustees shall be chosen, one for one year, one for two years, and one for three years, and each shall qualify and enter upon the duties of the office on the fourth Saturday of the same January. On the third Saturday in each succeeding January, an election shall be held to choose a successor to the trustee whose term is about to expire, and the term of the trustee's office shall be for three years and until a successor has qualified.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §462.19 in 1989 Code to §468.518 in 1989 Code Supplement

**468.519 Levee and pumping station districts.**

In levee and drainage districts having pumping stations trustees shall hold office until the fourth Saturday in January three years after election. On the third Saturday in January of each year a trustee shall be elected for a term of three years to succeed the member of the board whose term will expire on the following Saturday. At the election there shall also be elected, if necessary, a trustee to fill any vacancy which occurred before the election.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §462.20 in 1989 Code to §468.519 in 1989 Code Supplement

**468.520 Division of districts under trustees.**

When a trustee is to be elected, it shall be for a specified election district within the district.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §462.21 in 1989 Code to §468.520 in 1989 Code Supplement

**468.521 Elections—how conducted.**

The first election of trustees, the trustees shall act as judges of election; however, a trustee standing for election shall not serve as a judge and shall be replaced as judge by a person not standing for election who is eligible to be elected as a trustee. The clerk of the board shall act as one of the clerks and some owner of land in the district shall be appointed by the board to act as another clerk. The trustees shall fill all vacancies in the election board. The result of each election shall be certified to the auditor or the several county auditors if the district is located in more than one county.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §462.22 in 1989 Code to §468.521 in 1989 Code Supplement

**468.522 Change of time.**

The date on which said annual election shall be held may be changed by the choice of a majority of electors of such district expressed by ballot at any such

annual election, and the return of such vote shall be certified in the same manner as the returns for election of trustees.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.23 in 1989 Code to §468.522 in 1989 Code Supplement

#### **468.523 Vacancies.**

If any vacancy occurs in the membership of the board of trustees between the annual elections, the remaining members of the board shall have power to fill such vacancies by appointment of persons having the same qualifications as themselves. The persons so appointed shall qualify in the same manner and hold office until the next annual election when their successors shall be elected. In the event that all places on the board become vacant, then a new board shall be appointed by the auditor, or if more than one county, then by the auditor of the county in which the greater acreage of the district is located. The persons so appointed shall hold office until the next annual election and until their successors are elected and qualify.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.24 in 1989 Code to §468.523 in 1989 Code Supplement

#### **468.524 Bonds.**

The trustees shall qualify by giving a bond in the sum of not less than one thousand dollars or more than five thousand dollars each, conditioned for the faithful discharge of their duties, said bond to be fixed and approved by the auditor of the county, and if more than one, then of the county in which the greater acreage of the district is located.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.25 in 1989 Code to §468.524 in 1989 Code Supplement

#### **468.525 Organization.**

As soon as the trustees have qualified, they shall organize by electing one of their own number as chairperson and may select some other competent person as clerk of the board who shall serve during the pleasure of the board of trustees.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.26 in 1989 Code to §468.525 in 1989 Code Supplement

#### **468.526 Powers and duties of trustees.**

Trustees shall have control, supervision, and management of the district for which they are elected and shall be clothed with all of the powers now conferred on the board or boards of supervisors for the control, management, and supervision of drainage and levee districts under the laws of the state, including the power to acquire lands by conveyance, lease, or by the exercise of the power of eminent domain as provided for in chapter 472 for right of way for levees, ditches and settling basins within or without the district and to annex lands to the district, except as provided in section 468.527. Such authority shall extend only to the district for which they are elected.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.27 in 1989 Code to §468.526 in 1989 Code Supplement

#### **468.527 Costs and expenses.**

All costs and expenses necessary to discharge the duties by this subchapter conferred upon trustees shall be levied and collected as provided by law and such levy shall be upon certificate by the trustees to the board or boards of supervisors of the amount necessary for such levy.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.28 in 1989 Code to §468.527 in 1989 Code Supplement

#### **468.528 Disbursement of funds.**

Drainage and levee taxes when so levied and collected shall be kept by the treasurer of the county in a separate fund to the credit of the district for which it

is collected, shall be expended only upon the orders of trustees, signed by the president of the board, upon which warrants shall be drawn by the auditor upon the treasurer.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.29 in 1989 Code to §468.528 in 1989 Code Supplement

#### **468.529 Certificates and bonds.**

The board of trustees of any district shall have the same power to issue improvement certificates and levee and drainage bonds under the same conditions and with like tenor and effect as is provided by subchapter I, parts 1 through 5, for such issuance by the board of supervisors, except that in case of the issue of levee or drainage bonds, the same shall be approved by a judge of the district court in and for the county or counties in which such district lies, which approval shall be printed upon such bonds before the same are negotiated.

89 Acts, ch 126, §2, 3, SF 479

Transferred from §462.30 in 1989 Code to §468.529 in 1989 Code Supplement

#### **468.530 Report to auditor.**

Such trustees shall, from time to time, and with reasonable promptness, furnish the auditor of each county in which any part of said district is situated, with a correct report of their acts and proceedings, which report shall be signed by the chairperson and the clerk of the board and shall be recorded by the auditor in the drainage record, and shall be published in one official paper in the county having a general circulation in the district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.34 in 1989 Code to §468.530 in 1989 Code Supplement

#### **468.531 Compensation—statements required.**

The compensation of the trustees and the clerk of the board is hereby fixed at forty dollars per day each and necessary expenses, to be paid out of the funds of the drainage or levee district for each day necessarily expended in the transaction of the business of the district, but no one shall draw compensation for services as trustee and as clerk at the same time. The board of trustees of a district may by resolution establish for themselves and for the clerk of the district a lower rate of pay than is fixed by this section. They shall file with the auditor or auditors, if more than one county, itemized, verified statements of their time devoted to the business of the district and of the expenses incurred.

89 Acts, ch 126, §2, 3, SF 479

Transferred from §462.35 in 1989 Code to §468.531 in 1989 Code Supplement

#### **468.532 Change to supervisor management.**

Any district which has been placed under the management of trustees may be placed back under the management of the board or boards of supervisors in the manner provided in section 468.533.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.36 in 1989 Code to §468.532 in 1989 Code Supplement

#### **468.533 Petition—canvass.**

For such purposes a petition signed by a majority of persons, including corporations, owning land within the district assessed for benefits and who in the aggregate own more than one-half the acreage of such lands, may be filed in the office of the auditor and if more than one county, then a duplicate shall be filed in the office of the auditor of each county.

The trustees shall fix a date not less than ten nor more than thirty days from the date such petition is filed for the canvass of such petition, and the trustees and

auditor or auditors shall canvass said petition and certify and record in the drainage record the result.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.37 in 1989 Code to §468.533 in 1989 Code Supplement

#### **468.534 Remonstrance.**

Remonstrances signed by the same persons who are qualified to sign the petition may be filed in the office of the auditor and if the same persons petition and remonstrate they shall be counted on the remonstrance only. Such remonstrances shall be filed not less than five days before the time set for hearing.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.38 in 1989 Code to §468.534 in 1989 Code Supplement

#### **468.535 When change effective.**

If the result of the canvass shows a majority in favor of such change, then it shall become effectual on the date at which the next annual election of trustees would be held, and on such date the trustees shall surrender and turn over to the board or boards of supervisors the full and complete management and control of such district, together with all books, contracts, and other documents relating thereto.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.39 in 1989 Code to §468.535 in 1989 Code Supplement

#### **468.536 Final report of trustees.**

On or before the date such change becomes effective, the said trustees shall make and file with the auditor, or if more than one county, a duplicate with each auditor, a final report setting forth:

1. The amount of cash funds on hand or to the credit of the district.
2. The amount of outstanding indebtedness of the district, and the form thereof, whether in warrants, improvement certificates, or bonds and the amount of each.
3. Any outstanding contracts for repairs or other work to be done.
4. A statement showing the condition of the improvements of the district, and specifying any portion thereof in need of repair.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.40 in 1989 Code to §468.536 in 1989 Code Supplement

#### **468.537 Management by supervisors.**

After such change is made it shall be the duty of the board or boards of supervisors to manage and control the affairs of said district as fully and to the same extent as if it had never been under trustee management. They shall carry out any pending contracts lawfully made by the trustees as fully as if made by the board.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §462.41 in 1989 Code to §468.537 in 1989 Code Supplement

#### **468.538 and 468.539 Reserved.**

### SUBCHAPTER IV

#### FINANCING

#### PART 1

#### DRAINAGE REFUNDING BONDS

#### **468.540 Refunding bonds.**

The board of supervisors of any county may extend the time of the payment of any of its outstanding drainage bonds issued in anticipation of the collection of drainage assessments levied upon property within a drainage district, and may extend the time of payment of any unpaid assessment, or any installment or installments thereof, and may renew or extend the time of payment of such legal

bonded indebtedness, or any part thereof, for account of such drainage district, and may refund the same and issue drainage refunding bonds therefor subject to the limitation and in the manner hereinafter provided.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.1 in 1989 Code to §468.540 in 1989 Code Supplement

#### **468.541 Petition for refunding.**

Before the time of payment of said assessments or any installment or installments thereof shall be extended and before the board shall institute proceedings for the issuance of drainage refunding bonds, the owners of not less than fifteen percent of the land within a drainage district as shown by the transfer books in the auditor's office upon which drainage assessments are unpaid, shall file a petition with the board requesting the extension of the time of payment of assessments levied in said drainage district or of any installment or installments thereof, setting forth the date said assessments to be extended were levied, the aggregate amount thereof unpaid, and requesting the issuance of drainage refunding bonds, stating the amount and purpose of said bonds.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.2 in 1989 Code to §468.541 in 1989 Code Supplement

#### **468.542 Sufficiency of petition—hearing.**

Upon the receipt of any such petition the board shall, at the next regular meeting or regular adjourned meeting, determine the sufficiency thereof and fix a date of meeting of the board at which it is proposed to extend the time of payment of said unpaid assessments and to take action for the issuance of drainage refunding bonds.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.3 in 1989 Code to §468.542 in 1989 Code Supplement

#### **468.543 Notice.**

The board shall give ten days' notice of said meeting as required in relation to the issuance of bonds under chapter 23.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.4 in 1989 Code to §468.543 in 1989 Code Supplement

#### **468.544 Requirements of notice.**

Said notice shall be directed to each person whose name appears upon the transfer books in the auditor's office as owner of lands within said drainage district upon which said drainage assessments are unpaid, naming the owner, and also to the person or persons in actual occupancy of any of said tracts of land without naming them, and shall state the amount of unpaid assessments upon each forty-acre tract of land or less, and that all of said unpaid assessments, installment or installments thereof as proposed to be extended, may be paid in cash on or before the time fixed for said hearing, and that after the expiration of such time no assessments may be paid except in the manner and at the times fixed by the board in the resolution authorizing the issuance of said drainage refunding bonds.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.5 in 1989 Code to §468.544 in 1989 Code Supplement

#### **468.545 Extending payment of assessments.**

If no appeal is taken to the issuance of bonds, as provided by chapter 23, the board may extend the time of payment of the unpaid assessment or an installment or installments of it as requested in the petition and may issue drainage refunding bonds, or, in case of an appeal, the board may issue the bonds in accordance with the decision of the appeal board provided the assessments,

installment, or installments have not been entered on the delinquent tax lists and have not been previously extended.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.6 in 1989 Code to §468.545 in 1989 Code Supplement

#### **468.546 Appeal.**

Any person aggrieved by the final action of the board extending the time of payment of said unpaid assessment, installment or installments thereof may appeal therefrom to the district court of the county in which such action was taken.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.7 in 1989 Code to §468.546 in 1989 Code Supplement

#### **468.547 Time and manner of appeal.**

All appeals shall be taken in the manner provided in section 468.84 except that said appeal shall be taken within ten days after the date of the final action of the board.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.8 in 1989 Code to §468.547 in 1989 Code Supplement

#### **468.548 Maximum extension.**

The unpaid assessments against said lands within said drainage district shall not be extended for a period exceeding forty years from the time any assessment, installment or installments thereof to be extended become due. The board shall fix the amount that shall be levied and collected each year and may issue drainage refunding bonds covering all said unpaid assessments.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.9 in 1989 Code to §468.548 in 1989 Code Supplement

#### **468.549 Form of bonds.**

Drainage refunding bonds shall be issued in denominations of not less than one hundred dollars nor more than one thousand dollars, each, running not more than forty years, bearing interest at a rate not exceeding that permitted by chapter 74A, payable semiannually, and shall be substantially in the form provided by law relating to drainage bonds, with such changes as shall be necessary to conform with this part.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.10 in 1989 Code to §468.549 in 1989 Code Supplement

#### **468.550 Numbering, signing and attestation.**

Said bonds shall be numbered consecutively, signed by the chairperson of the board and attested by the county auditor with the seal of the county affixed. The interest coupons attached thereto shall be executed by the county auditor.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.11 in 1989 Code to §468.550 in 1989 Code Supplement

#### **468.551 Resolution required.**

All bonds issued under the provisions of this part shall be issued pursuant to and in conformity with a resolution adopted by the board of supervisors which shall specify the amount of unpaid assessments to be extended, the times when the installment or installments of extended assessments shall become due, the amount of drainage refunding bonds authorized to be issued, the purpose for which issued, the rate of interest they shall bear, the place where the principal and interest shall be payable and the time or times when they shall become due, and such other provisions not inconsistent with law in reference thereto, as the board shall deem proper.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.12 in 1989 Code to §468.551 in 1989 Code Supplement

**468.552 Record of resolution.**

Said resolution shall be entered of record upon the minutes of proceedings of said board and shall constitute a contract between the drainage district and the purchasers or holders of said bonds and shall be full authority for the revision of the tax rolls to accord therewith.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §463.13 in 1989 Code to §468.552 in 1989 Code Supplement

**468.553 Record of bonds.**

When the bonds have been executed as aforesaid they shall be delivered to the county treasurer and the treasurer's receipt taken therefor. The treasurer shall register said bonds in a book provided for that purpose which shall show the number of each bond, its date, date of sale, amount, date of maturity, and the name and address of the purchaser, and if exchanged what evidences of indebtedness were received therefor, which record shall at all times be open to the inspection of the owners of property within said drainage district. The treasurer shall thereupon certify on the back of each bond as follows:

This bond duly and properly registered in my office this ..... day of ....., 19 .....

.....  
Treasurer of the County of  
.....

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §463.14 in 1989 Code to §468.553 in 1989 Code Supplement

**468.554 Liability of treasurer—reports.**

The treasurer shall stand charged on the treasurer's official bond with all bonds so delivered to the treasurer and the proceeds thereof. The treasurer shall report under oath to the board, at each first regular session thereof in each month, a statement of all such bonds sold or exchanged by the treasurer since the treasurer's last report and the date of such sale or exchange and when exchanged a description of the indebtedness for which exchanged.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §463.15 in 1989 Code to §468.554 in 1989 Code Supplement

**468.555 Sale, exchange and cancellation.**

The county treasurer shall, under a resolution and the direction of the said county board of supervisors, sell the bonds for cash on the best available terms or exchange them on like terms for the legal indebtedness of the said drainage district evidenced by the outstanding drainage bonds, authorized to be refunded by the resolution authorizing the issue of said refunding bonds, and the proceeds shall be applied and exclusively used for the purpose for which said bonds are issued. In no case shall they be sold or exchanged for a less sum than their face value and all interest accrued. After registration the treasurer shall deliver said refunding bonds to the purchaser thereof and when exchanged for said bonded indebtedness of said district, shall at once cancel a like amount of said drainage bonds.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §463.16 in 1989 Code to §468.555 in 1989 Code Supplement

**468.556 Redemption from tax sale.**

In case any land within such drainage district shall have been sold at tax sale for failure of the owner thereof to pay any drainage assessments levied thereon, and before any tax deed has been issued, then on application of the owner of such land, the board of supervisors may effect a redemption thereof for such owner out of the proceeds of any refunding bond issue and add the cost of such redemption

to the amount of the unpaid assessments against such land, payment thereof to be extended in manner and as a part of the remaining unpaid assessments thereon.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.17 in 1989 Code to §468.556 in 1989 Code Supplement

#### **468.557 Effect of extension.**

The extension of the time of payment of any unpaid assessments or installment or installments thereof, in the manner aforesaid shall in no way impair the lien of said assessments as originally levied or the priority thereof, nor the right, duty, and power of the officers authorized by law to levy, collect, and apply the proceeds thereof to the payment of said drainage refunding bonds.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.18 in 1989 Code to §468.557 in 1989 Code Supplement

#### **468.558 Additional assessments.**

If said assessments should for any reason be insufficient to meet the interest and principal of said drainage refunding bonds additional assessments shall be made to provide for such deficiency.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.19 in 1989 Code to §468.558 in 1989 Code Supplement

#### **468.559 Applicability of funds.**

All special assessments, taxes, and sinking funds applicable to the payment of the indebtedness refunded by said drainage bonds shall be applicable in the same manner and to the same extent to the payment of such refunding bonds issued hereunder, and the powers, rights, and duties to levy and collect special assessments or taxes, or create liens upon property shall continue until all refunding bonds shall be paid.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.20 in 1989 Code to §468.559 in 1989 Code Supplement

#### **468.560 Trust fund.**

The special assessments out of which said bonds are payable shall be collected and held separate and apart in trust for the payment of said refunding bonds.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.21 in 1989 Code to §468.560 in 1989 Code Supplement

#### **468.561 Liens unimpaired.**

When drainage refunding bonds are issued hereunder, nothing in this part shall be construed as impairing the lien of any unpaid drainage assessments or installments in such drainage district, the time of payment of which is not extended, nor shall this part be construed as impairing the priority of the lien thereof nor the right, duty, and power of the officers authorized by law to levy, collect, and apply the proceeds thereof to the payment of outstanding drainage bonds issued in anticipation of the collection thereof.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.22 in 1989 Code to §468.561 in 1989 Code Supplement

#### **468.562 Limitation of action.**

No action shall be brought questioning the validity of any of the bonds authorized by this part from and after three months from the time the same are ordered issued by the proper authorities.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.23 in 1989 Code to §468.562 in 1989 Code Supplement

#### **468.563 Void bonds or assessments.**

The provisions of this part shall not apply to bonds or assessments adjudicated to be void.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.24 in 1989 Code to §468.563 in 1989 Code Supplement

**468.564 Interpretative clause.**

This part shall be construed as granting additional power without limiting the power already existing for the extension of the time of payment of drainage assessments and the issuance of drainage bonds.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.25 in 1989 Code to §468.564 in 1989 Code Supplement

**468.565 Composition with creditors—federal loans.**

For the purpose of refinancing, adjusting, composing and refunding in such adjusted amount the indebtedness of any drainage districts or levee districts, found to be in financial distress, the governing body thereof, or board of supervisors as the case may be, upon its own motion, is authorized to enter into agreements with the creditors of said district, for the reduction and composition of its outstanding indebtedness, and to make application for and negotiate with the Reconstruction Finance Corporation, or any other loaning agency, for the borrowing of funds for such purposes.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.26 in 1989 Code to §468.565 in 1989 Code Supplement

**468.566 Refinancing powers.**

In order to effect such loan, the governing body of such district, or board of supervisors, is authorized to execute such agreements and contracts, and to fulfill such requirements of the loaning agency as are not inconsistent with this part; and to issue, and pledge or sell such bonds at their face value to the said Reconstruction Finance Corporation, or other loaning agency, furnishing the funds for such debt readjustment, in the amount required for such adjustment.

The governing body, or board of supervisors, shall also have the authority as a part of such plan of refinancing, adjusting, composing, and refunding its indebtedness, to cancel the old assessments collectible against the land within the district, pledged to the payment of its outstanding indebtedness and proportionately and equitably relevy the same, with interest, over the period covered by the new bonds, in an amount sufficient to pay said new bonds and interest thereon, provided, however, that the new assessments thereby created against any tract of land within the district shall not be in excess of the unpaid assessments against such tract before the readjustment or composition is made, and provided further, that such new and extended assessment against such tract shall fully replace the old assessment.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §463.27 in 1989 Code to §468.566 in 1989 Code Supplement

**468.567 Report and hearing—appeal.**

At the direction of the governing board of such district, or board of supervisors, the county auditor of the county within which the land on which the indebtedness is being adjusted is situated, shall compile a tabulated report as to the lands within the said district, setting forth:

1. The name of the owner of each assessed tract as shown by the transfer books in the county auditor's office.
2. The amount of the unpaid old assessments against each of said tracts.
3. The amount of the new assessment required to pay the new bonds to be issued, together with the installments to be paid thereon annually of principal and interest, and the maximum period of time over which such assessments shall be paid.

After such report is tabulated and filed, a hearing upon the contemplated action of the governing body of such district, or board of supervisors, to make the proposed adjustment, composition, renewal and refunding in such adjusted amount of its outstanding indebtedness, together with the issuance of bonds and the levying of assessments therefor, shall be had in the manner and upon the same

notice as is prescribed in sections 468.543 through 468.545 and appeal may be made therefrom as provided in this part.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §463.28 in 1989 Code to §468.567 in 1989 Code Supplement

**468.568 and 468.569** Reserved.

## PART 2

### DEFAULTED DRAINAGE BONDS

#### **468.570 Extension of payment—application.**

When drainage district bonds have been issued in anticipation of the collection of drainage district assessments levied on real estate within such drainage district are in default, either for failure to pay principal installments or accrued interest thereon, and funds are not on hand within thirty days after such default, ten owners of real estate in such district or the owners of not less than ten percent in amount of the outstanding drainage bonds of such district may make application to the district court of the county wherein said drainage district is located, asking for an extension of time of payment, and a reamortization of the assessments on the real estate within such drainage district, which was in default, and a new schedule of payments of the bonds and other indebtedness, and the issuance of new bonds as provided by this part.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §464.1 in 1989 Code to §468.570 in 1989 Code Supplement

#### **468.571 Petition.**

Ten owners of real estate in such district, or the owners of not less than ten percent in amount of the outstanding drainage bonds of such drainage district, may institute proceedings in the district court of the county issuing such bonds wherein the drainage district is located, by filing a petition which shall set forth the names and addresses of the ten petitioning real estate owners or the names and addresses of the petitioning owners of ten percent in amount of the drainage bonds of said district, that said bonds are in default as defined in section 468.570, that the petitioners have good reason to believe that said default cannot, or will not, be removed by payment under the present schedule of said district, and asking that the matters herein presented be reviewed by the court, and determined as provided by this part.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §464.2 in 1989 Code to §468.571 in 1989 Code Supplement

#### **468.572 Hearing.**

On the filing of such petition the court shall enter an order fixing the date for hearing, which date shall be at least four weeks subsequent to the date of the filing of the order.

89 Acts, ch 126, §2, 3 SF 479  
Transferred from §464.3 in 1989 Code to §468.572 in 1989 Code Supplement

#### **468.573 Parties—notice—service.**

The board of supervisors of such county or counties wherein the drainage district is located, shall be notified of the proceeding and hearing by original notice served in the same manner as in civil actions; notice of said hearing shall be served upon all owners of each tract of land or lot within such drainage district, as shown by the transfer books in the county auditor's office, upon each lienholder or encumbrancer of any land within the said drainage district as shown by the county records, and upon all persons holding claims against said drainage district, as shown by the county records, and also upon all other persons whom it may concern, including bondholders and actual occupants of the land within said drainage district, without naming individuals, by publication thereof, once each

week for two consecutive weeks, in some newspaper of general circulation in the county or counties where said drainage district is located, the last of which publications shall be not less than twenty days prior to the date set for hearing on the said petition and a copy of such notice shall also be sent by ordinary mail to the person's last known address unless there is on file an affidavit of one of the petitioners or the petitioner's attorney stating that no mailing address is known and that diligent inquiry has been made to ascertain it. Such copy of notice shall be mailed not less than twenty days prior to the date set for hearing. Proof of publication and mailing shall be by affidavit and shall be included in the records of the proceedings.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §464.4 in 1989 Code to §468.573 in 1989 Code Supplement

#### **468.574 Jurisdiction of court.**

The district court shall have jurisdiction and power to adjudicate all the rights and issues between the drainage district, and the landowners, bondholders, lienholders, encumbrancers, claimants and creditors of the drainage district, and in determining the rights of the parties, shall take into consideration, the maturity of the bonds, the interest rate of the bonds, the present schedule and classification of assessments on the real estate, the ratio between the amount in default, and the amount of unpaid assessments in the drainage district, the gross amount needed to retire the bonds now outstanding and in default, the current retirement schedule on other indebtedness of the drainage district, the general tax structure of the drainage district, the unpaid taxes in the drainage district, the default by the drainage district in the payment of its bonded indebtedness, and the current financial condition of the taxpayers.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §464.5 in 1989 Code to §468.574 in 1989 Code Supplement

#### **468.575 Conservator appointed.**

If the court finds that the necessary parties have instituted the proceedings, and that all necessary parties have been properly served with notice, and the order of the court, and that the drainage district is in default in the payment of its installment assessments, or the interest thereon, the court shall enter an order appointing the county auditor of the county in which such drainage district is located, or if such drainage district is located in more than one county, the county auditor of the county wherein the greater portion of the lands within said drainage district are located, receiver for the said drainage district, said receiver being hereafter called "conservator", and the said conservator shall be under the court's direction. The conservator shall be allowed such compensation as may be determined by the court, and said conservator may employ, under the direction and approval of the court, an attorney, and such assistants as may be necessary to perform the duties required by the conservator under the law, and orders of court.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §464.6 in 1989 Code to §468.575 in 1989 Code Supplement

#### **468.576 Report—hearing thereon.**

The conservator shall, within thirty days from the date of the conservator's appointment, prepare and file with the clerk of the district court, a full report, giving in detail, the bonded indebtedness of said drainage district, the accrued interest thereon, and any and all other indebtedness owing by said drainage district; a full and complete schedule of all lands sold at tax sale, including the amount of drainage assessments thereon; a list of all real estate within the drainage district, showing the unpaid assessments thereon; also said conservator shall set forth a schedule, under which the bonded indebtedness of said drainage district may be reamortized; also a schedule under which all other indebtedness of said drainage district may be paid or reamortized. Upon the filing of the report

by the conservator, the court shall set a date for hearing thereon, which date shall not be less than ten or more than fifteen days, from the filing thereof.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §464.7 in 1989 Code to §468.576 in 1989 Code Supplement

#### **468.577 Adjudication on report.**

At the hearing of the conservator's report, the court shall fix and determine the amount of money in the hands of the county treasurer belonging to said drainage district; the amount of the indebtedness of said drainage district; to whom said indebtedness is due, and fix and determine the time, manner and priority of payment of said indebtedness; also the court shall fix and determine the amount of unpaid assessment or assessments against each tract of land within said drainage district, and may extend the time of payment, reamortize and reallocate the said assessments upon each tract of land within said drainage district; also, if the court finds that the assessments as levied against each tract of land within said drainage district, are not sufficient to pay the indebtedness due and owing by said drainage district, the court may order the board of supervisors of the county within which the said drainage district is located, to levy an assessment against the lands within said drainage district, in an amount to pay the deficit; provided, however, that no assessment for the payment of drainage bonds or improvement certificates shall be levied against any tract of land where the owner of said land is not delinquent in payment of any assessment and provided, further, that the amount of the reassessment on a particular piece of land shall be in direct proportion to the amount of unpaid assessments on said land and provided, further, that no assessment or expenses incidental thereto, for the payment of drainage bonds or improvement certificates under this part, shall be levied against any tract of land where the owner of said land had previously paid all of the owner's assessment. Said assessment to be assessed and levied by the board of supervisors upon the lands within said drainage district, in the same proportion as the original assessment. A copy of said order entered by the court, shall be filed by the clerk of the district court with the county auditor, and the schedule of payments of the indebtedness of said drainage district as fixed and determined by the court, shall be entered upon the drainage records of the drainage district and also spread upon the tax records of the county, and shall become due and payable at the same time as ordinary taxes, and shall be collected in the same manner with the same penalties for delinquency, and the same manner of enforcing collection by tax sale. Also the court may apportion the costs between the creditors of the drainage district, and the drainage district.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §464.8 in 1989 Code to §468.577 in 1989 Code Supplement

#### **468.578 Refunding bonds.**

The court shall direct the board of supervisors to issue bonds in lieu of the outstanding drainage bonds for said drainage district, and additional bonds for the accrued interest and other indebtedness of said drainage district. Said bonds shall be payable in amounts, and at the time and manner, and with priority of payments as has been determined by order of court, as provided by section 468.577, and shall be called "conservator's drainage district bonds". Each bond shall be numbered and shall state on its face that it is a conservator's drainage district bond; that it is issued in pursuance of a resolution adopted by the board of supervisors, under order of court, and giving the name of the court and the county where such court is held; that it is issued to pay indebtedness of the drainage district; shall state the county where such district is located, and the number of the drainage district for which it is issued; shall state the date of maturity of the bond, the rate of interest thereon, which rate shall not exceed that permitted by chapter 74A, and that the bond is to be paid only from taxes assessed, levied and

collected on the lands within the drainage district for which the bond is issued subject to the provisions of section 468.577. All bonds shall be signed by the chairperson of the board of supervisors and countersigned by the conservator designated as such. The interest coupons attached to said bonds shall be attested by the signature of the conservator or a facsimile thereof. When the bonds have been executed as herein required, the conservator may sell said bonds at not less than par with accrued interest thereon, and pay the indebtedness of said drainage district, or may exchange said bonds with the creditors of said drainage district in amounts as have been fixed and determined by the court, and the conservator shall cancel all drainage bonds, improvement certificates, warrants or other evidence of indebtedness received by the conservator in lieu of the conservator's bonds.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §464.9 in 1989 Code to §468.578 in 1989 Code Supplement

**468.579 Lien.**

When conservator's drainage district bonds are issued hereunder, nothing herein shall be construed as impairing the lien of all unpaid assessments upon the real estate within said drainage district, nor shall this part be construed as impairing the priority of the lien thereof, nor the right, duty and power of the officer authorized by law, to levy, collect and apply the proceeds thereof, to the payment of outstanding drainage bonds issued in anticipation of the collection thereof.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §464.10 in 1989 Code to §468.579 in 1989 Code Supplement

**468.580 Trustees as parties.**

Should a drainage district in default be managed by drainage district trustees, said trustees shall also be named as proper and necessary parties defendant.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §464.11 in 1989 Code to §468.580 in 1989 Code Supplement

**468.581 Limitation of action.**

No action shall be brought, questioning the validity of any conservator's drainage district bond issued under this part from and after three months from the date of the order causing the said bonds to be issued.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §464.12 in 1989 Code to §468.581 in 1989 Code Supplement

**468.582 through 468.584 Reserved.**

PART 3

FUNDING OF COUNTY DRAINAGE DISTRICTS

**468.585 Definitions.**

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

1. "Drainage improvement" includes the construction, improvement, or repair of the principal structures, works, component parts and accessories of a storm sewer, drainage conduit, channel, or levee for the collection, detention, or discharge of drainage or surface waters.
2. "Urban drainage district" or "district" means a district defined by a county and one or more cities within the county pursuant to an agreement entered into by the county and cities in accordance with chapter 28E and this part with respect to drainage improvements which the county and cities determine benefit the property located in the cities and the designated unincorporated area of the county.
3. "Cost" means the same as defined in section 384.37, subsection 6.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §331.485 in 1989 Code to §468.585 in 1989 Code Supplement

**468.586 Assessment of costs of drainage improvements.**

A county may assess to property within an urban drainage district the cost of a drainage improvement within the county and drainage facilities extending outside the county. A county is empowered to proceed and construct and to assess the cost of a drainage improvement within a district in the same manner as a city may proceed under division IV of chapter 384 and the provisions of division IV of chapter 384 apply to counties with respect to drainage improvements, the assessment of their costs and the issuance of bonds for the improvements. A county may contract for a drainage improvement within a district under this part pursuant to part 3 of division III of chapter 331.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §331.486 in 1989 Code to §468.586 in 1989 Code Supplement

**468.587 Special assessment bonds.**

A county may issue special assessment bonds in anticipation of the collection of special assessments for the cost of drainage improvements within a district in the same manner as provided for cities under division IV of chapter 384.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §331.487 in 1989 Code to §468.587 in 1989 Code Supplement

**468.588 Chapter 28E agreement.**

An agreement entered into between a city and a county in accordance with chapter 28E with respect to a drainage improvement may include among others the following provisions:

1. The sharing of the total cost of the drainage improvement between the city and the county.
2. The amount of total assessments against private property within the city and within the unincorporated area of the county included within the district.
3. The method of specially assessing and determining benefits.
4. The amount of funds, if any, to be contributed by the city and county to the project other than special assessments.
5. The rates to be established and imposed upon property within the drainage district to pay the expenses of operation and maintenance of the drainage improvements.
6. The reduction of the county's debt service tax levy rate against property within a city which is a party to the joint agreement.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §331.488 in 1989 Code to §468.588 in 1989 Code Supplement

**468.589 Rates and charges for services and connection.**

If a county and city have entered into an agreement pursuant to chapter 28E to create an urban drainage district, the county or city or both may, to the extent and in the manner provided in the agreement, 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 a drainage improvement against property within the district and establish, impose, adjust, and provide for the collection of charges for connection to a drainage improvement. Rates and charges must be established by ordinance of the governing body of the county or city imposing the rates or charges. Rates or charges for the services of and connection to the drainage improvement if not paid as provided by the ordinance of the governing body, are a lien upon the premises served or benefited by that improvement and may be certified to the county auditor and collected in the same manner as other taxes.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §331.489 in 1989 Code to §468.589 in 1989 Code Supplement

**468.590 Cities subject to debt service tax levy—rates.**

If a county and city have entered into a joint agreement pursuant to chapter 28E to create a district and issue county general obligation bonds to fund the costs of a drainage improvement in that district, the county's debt service tax levy for the county general obligation bonds shall not be levied against property located in any city except a city which has entered into the joint agreement.

The county and the cities entering into the joint agreement may provide in the joint agreement for a different rate of the county's debt service tax levy against property in unincorporated areas of the county and property within those cities.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §331.490 in 1989 Code to §468.590 in 1989 Code Supplement

**468.591 Authority.**

The authority of a city or county under this part with respect to districts and the financing of drainage improvements is in addition to any other authority of a city or county to contract, and levy special assessments and issue bonds to fund the costs.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §331.491 in 1989 Code to §468.591 in 1989 Code Supplement

**468.592 through 468.599 Reserved.**

SUBCHAPTER V

INDIVIDUAL DRAINAGE RIGHTS

**468.600 Drainage through land of others—application.**

When the owner of any land desires to construct any levee, open ditch, tile or other underground drain, for agricultural or mining purposes, or for the purposes of securing more complete drainage or a better outlet, across the lands of others or across the right of way of a railroad or highway, or when two or more landowners desire to construct a drain to serve their lands, the landowner or landowners may file with the auditor of the county in which any such land or right of way is situated, an application in writing, setting forth a description of the land or other property through which the landowner is desirous of constructing any such levee, ditch, or drain, the starting point, route, terminus, character, size, and depth thereof. The auditor shall collect a fee of one dollar for filing each application for a ditch or drain.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.1 in 1989 Code to §468.600 in 1989 Code Supplement

**468.601 Notice of hearing—service.**

Upon the filing of any such application, the auditor shall forthwith fix a time and place for hearing thereon before the county board of supervisors, which hearing shall be not more than ninety days nor less than thirty days from the time of the filing of such application, and cause notice in writing to be served upon the owner of each tract of land across which any such levee, ditch, or drain is proposed to be located, as shown by the transfer books in the office of the county auditor, and also upon the person in actual occupancy of any such lands, of the pendency and prayer of such application and the time and place set for hearing on the same before the board of supervisors, which notice, as to residents of the county and railroad companies, shall be served not less than ten days before the time set for such hearing, in the manner that original notices are required to be served. Notice to a railroad company may be served upon any station agent.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.2 in 1989 Code to §468.601 in 1989 Code Supplement

**468.602 Service upon nonresident.**

In case any such owner is a nonresident of the county the owner may be personally served in the manner required for original notices or, in lieu thereof, the owner may be given notice as provided in section 468.15.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.3 in 1989 Code to §468.602 in 1989 Code Supplement

**468.603 Service on omitted parties—adjournment.**

If at the hearing it should appear that any person entitled to notice has not been served with notice, the board may postpone such hearing and fix a new time for the same, and notice of such new time of hearing may be served on such omitted persons in the manner and for the time provided by law and by fixing such new time for hearing and by adjournment to such time, the board shall not lose jurisdiction of the subject matter of such proceeding nor of any persons previously served with notice.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.4 in 1989 Code to §468.603 in 1989 Code Supplement

**468.604 Claims for damages—waiver.**

Any person or corporation claiming damages or compensation for or on account of the construction of any such improvement, shall file a claim in writing therefor with the auditor at or before the time fixed for hearing on the application. A failure to file such claim at the time specified shall be deemed to be a waiver of the right to claim or recover such damage.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.5 in 1989 Code to §468.604 in 1989 Code Supplement

**468.605 Hearing—sufficiency of application—damages.**

At the time set for hearing on the application, if the board shall find that all necessary parties have been served with notice as required, they shall proceed to hear and determine the sufficiency of the application as to form and substance, which application may be amended both as to form and substance before final action thereon. They shall also determine the merits of the application, all objections thereto, and all claims filed for damages or compensation, and may view the premises. The board may adjourn the proceedings from day to day, but no adjournment shall be for a longer period than ten days.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.6 in 1989 Code to §468.605 in 1989 Code Supplement

**468.606 Shall locate when—specifications.**

If the supervisors find that the levee, ditch, or drain petitioned for will be beneficial for sanitary, agricultural, or mining purposes, they shall locate the same and fix the points of entrance and exit on such land or property, the course of the same through each tract of land, the size, character, and depth thereof, when and in what manner the same shall be constructed, how kept in repair, what connections may be made therewith, what compensation, if any, shall be made to the owners of such land or property for damages by reason of the construction of any such improvements, and any other question arising in connection therewith.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.7 in 1989 Code to §468.606 in 1989 Code Supplement

**468.607 Findings—record.**

The board shall reduce its findings, decision, and determination to writing, which shall be filed with the auditor, who shall record it in the official record of the board's proceedings, together with the application and all other papers filed in connection therewith, and the auditor shall cause the findings and decision of the board to be recorded in the office of the recorder of the county in which such land

is situated and said decision shall be final unless appealed from as provided in section 468.608.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.8 in 1989 Code to §468.607 in 1989 Code Supplement

#### **468.608 Appeal—notice.**

Either party may appeal to the district court from any such decision by causing to be served, within ten days from the time it was filed with the auditor, a notice in writing upon the opposite party of the taking of such appeal, which notice shall be served in the same manner as is provided for the service of original notices. If the appellant is the party petitioning for the drain, the appellant shall also file a bond, conditioned to pay all costs of appeal that may be assessed against the appellant, which bond, if good and sufficient, shall be approved by the auditor.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.9 in 1989 Code to §468.608 in 1989 Code Supplement

#### **468.609 Transcript.**

In case of appeal, the auditor shall certify to the district court a transcript of the proceedings before the board, which shall be filed in said court with the appeal bond, the party appealing paying for said transcript and the docketing of said appeal, as in other cases.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.10 in 1989 Code to §468.609 in 1989 Code Supplement

#### **468.610 Appeal—how tried—costs.**

The cause shall be tried in the district court by ordinary proceedings, upon such pleading as the court may direct, each party having the right to offer such testimony as shall be admissible under the rules of law. If the appellant does not recover a more favorable judgment in the district court than the appellant received in the decision of the board, the appellant shall pay all the costs of appeal.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.11 in 1989 Code to §468.610 in 1989 Code Supplement

#### **468.611 Parties—judgment—orders.**

The party claiming damages shall be the plaintiff and the applicant shall be the defendant; and the court shall render such judgment as shall be warranted by the verdict, the facts, and the law upon all the matters involved, and make such orders as will cause the same to be carried into effect.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.12 in 1989 Code to §468.611 in 1989 Code Supplement

#### **468.612 Costs and damages—payment.**

The applicant shall pay the costs of the board and auditor and for the serving of notices for hearing, the fees of witnesses summoned by the board on said hearing, and the recording of the finding of the board by the county recorder.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.13 in 1989 Code to §468.612 in 1989 Code Supplement

#### **468.613 Construction.**

Before entering on the construction of the drain, the party applying therefor shall pay to the party through whose land said drain is to be constructed the damages awarded to that party, or shall pay the same to the board for that party's use. The applicant may proceed to construct said drain in accordance with the decision of the board, and the taking of an appeal shall not delay such work.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.14 in 1989 Code to §468.613 in 1989 Code Supplement

**468.614 Construction through railroad property.**

If any such ditch or drain shall be located through or across the right of way or other land of a railroad company, the board shall determine the cost of constructing the same and the railroad company shall have the privilege of constructing such improvement through its property in accordance with the specifications made by the board and recover the costs thereof as fixed by the board. Such railroad company before it may exercise such privilege shall file its election to that effect with the auditor within five days after the decision of the board is filed.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.15 in 1989 Code to §468.614 in 1989 Code Supplement

**468.615 Deposit.**

In case such election is filed the applicant shall within ten days thereafter pay to the auditor, for the use of the railroad company, the cost of constructing the drainage improvement through its property, in addition to the amount that may be allowed as damages, and when the railroad company shall have completed the improvement through its property in accordance with such specifications it shall be entitled to demand and receive from the auditor such cost.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.16 in 1989 Code to §468.615 in 1989 Code Supplement

**468.616 Failure to construct.**

If the railroad company shall fail to so construct the improvement for a period of thirty days after filing its election so to do, the applicant may proceed to do so and may have returned to the applicant the cost thereof deposited with the auditor.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.17 in 1989 Code to §468.616 in 1989 Code Supplement

**468.617 Repairs.**

In case any dispute shall thereafter arise as to the repair of any such drain, the same shall be determined by the county board of supervisors upon application in substantially the same manner as in the original construction thereof.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.18 in 1989 Code to §468.617 in 1989 Code Supplement

**468.618 Obstruction.**

Any person who shall dam up, obstruct, or in any way injure any ditch or drain so constructed, shall be liable to pay to the person owning or possessing the swamp, marsh, or other lowlands, for the draining of which such ditch or ditches have been opened, double the damages that shall be sustained by the owner, and, in case of a second or subsequent offense by the same person, treble such damages.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.19 in 1989 Code to §468.618 in 1989 Code Supplement

**468.619 Drains on abutting boundary lines.**

When any watercourse or natural drainage line crosses the boundary line between two adjoining landowners and both parties desire to drain their land along such watercourse or natural drainage line, but are unable to agree as to the junction of the lines of drainage at such boundary line, the board of supervisors of the county in which said land is located shall have full power and authority upon the application of either party to hear and determine all questions arising between such parties after giving due notice to each of the time and place of such hearing, and may render such decision thereon as to said board shall seem just and equitable.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.20 in 1989 Code to §468.619 in 1989 Code Supplement

#### **468.620 Boundary between two counties.**

If any controversy referred to in section 468.619 relates to a boundary line between adjoining owners which is also the boundary line between two counties, then such controversy shall be determined by the joint action of the boards of supervisors in said two adjoining counties, and all the proceedings shall be the same as provided in section 468.619 except that it shall be by the joint action of the boards of the two counties.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.21 in 1989 Code to §468.620 in 1989 Code Supplement

#### **468.621 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.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.22 in 1989 Code to §468.621 in 1989 Code Supplement

#### **468.622 Drainage connection with highway.**

When the course of natural drainage of any land runs to a public highway, the owner of such land shall have the right to enter upon such highway for the purpose of connecting the owner's drain or ditch with any drain or ditch constructed along or across the said highway, but in making such connections, the owner shall do so in accordance with specifications furnished by the highway authorities having jurisdiction thereof, which specifications shall be furnished to the owner on application. The owner shall leave the highway in as good condition in every way as it was before the said work was done.

If a tile line or drainage ditch must be projected across the right of way to a suitable outlet, the expense of both material and labor used in installing the tile line or drainage ditch across the highway and any subsequent repair thereof shall be paid from funds available for the highways affected.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.23 in 1989 Code to §468.622 in 1989 Code Supplement

#### **468.623 Private drainage system—record.**

Any person who has provided a system of drainage on land owned by the person may have the same made a matter of record in the office of the county recorder of the county in which the drainage system is located, provided any drainage system constructed after July 1, 1969, shall be made a matter of record, as is hereinafter provided.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.24 in 1989 Code to §468.623 in 1989 Code Supplement

#### **468.624 Drainage plat book.**

The county recorder shall be provided with a loose-leaf plat book, made to scale, for each section of the land within the county in which such records shall be made. Such plat book shall consist of sheets of paper interbound by sheets of tracing cloth with proper heading, margin, and binding edge. Said plat book shall be used for keeping a record of drainage systems filed by any landowner. Plats so offered for record shall be drawn to scale on paper measuring eight and one-half by eleven

inches, giving distances in feet and indicating the size of tile used, length and location of tile lines as installed with reference to government corners and subdivisions.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.25 in 1989 Code to §468.624 in 1989 Code Supplement

#### **468.625 Record book and index.**

The county recorder shall also be provided with a record book and index referring to the plats provided for in section 468.624, and which may be used to give the owner's name, description of tracts of land drained, stating the time when drainage system was established, the kind, quality, and brand of tile used, the name and place of manufacturing plant, the name of contractors who laid the tile, the name of the engineer in charge of the survey and installation, the cost of tile, delivery, installation, and engineering expense, depths, grades, outlets, connections, contracts for agreements with adjoining landowners as to connections, and any other matters or information that may be considered of value, all of said information to be furnished by the landowner or the engineer having charge of the installation of the same and certified to under oath.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.26 in 1989 Code to §468.625 in 1989 Code Supplement

#### **468.626 Original plat filed.**

In lieu of making the record as herein provided any landowner may file with the county recorder the original plat used in the establishment of said drainage system, or a copy thereof, which shall be certified by the engineer having made the same.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.27 in 1989 Code to §468.626 in 1989 Code Supplement

#### **468.627 Record not part of title.**

The drainage records herein provided for shall not be construed as an essential part of the title to said lands, but may upon request be set out by abstracters as part of the record title of said lands.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.28 in 1989 Code to §468.627 in 1989 Code Supplement

#### **468.628 Fees for record and copies.**

The county recorder shall be entitled to collect fees for the filing and information heretofore provided for, and for the making of copies of such records the same as is provided for other work of a similar nature.

89 Acts, ch 126, §2, 3 SF 479

Transferred from §465.29 in 1989 Code to §468.628 in 1989 Code Supplement

#### **468.629 Lost records—hearing.**

When the records of any mutual drain are incomplete or have been lost, or when the owner of any land affected by such mutual drain believes that the apportionment of costs or damages is inequitable or that repair or reconstruction is needed, such owner may petition the board of supervisors for relief. The board shall notify all affected parties of such petition, and set a date for a hearing on the petition. The board may adjourn the proceedings from day to day, but no adjournment shall be for more than ten days, and may order such engineering examinations, reclassifications of lands and appraisals of damages as they deem necessary. At the completion of the hearing the supervisors shall re-establish the original records or establish a revised record and basis for apportionment of costs and damages as they find equitable and advisable, and may order such repairs or reconstruction as they find to be needed. All cost of such re-establishment or

revisions of records, and of the needed repair or reconstruction shall be apportioned in accordance with the basis established.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §465.30 in 1989 Code to §468.629 in 1989 Code Supplement

**468.630 Mutual drains—establishment as district.**

Whenever a landowner fails to pay the cost apportioned as provided in section 468.629, or whenever a repair or reconstruction ordered as provided in said section is not made within reasonable time, and in such other instances as the board of supervisors desires, the board by resolution shall establish such mutual drain as a drainage district; all proceedings thereafter shall be as provided for other legally established districts.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §465.31 in 1989 Code to §468.630 in 1989 Code Supplement

**468.631 Appeal.**

The decisions and actions of the board of supervisors under section 468.630 may be appealed as provided in sections 468.608 through 468.610.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §465.32 in 1989 Code to §468.631 in 1989 Code Supplement

**468.632 Record filed with established district.**

When the lands served by a mutual drain are within the boundary of an established drainage district, a complete record of the proceeding relating to such mutual drain shall be filed with and as a part of, the records of such established district.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §465.33 in 1989 Code to §468.632 in 1989 Code Supplement

**468.633 Lost or incomplete records.**

If the records referred to in section 468.632 are incomplete or have been lost, the board may re-establish such records so as to proportion future costs and damages in proportion to the benefits and damages received because of the construction of such mutual drains and improvements thereof, and may order such surveys, engineering reports, reclassification of lands and appraisal of damages as they deem necessary. All costs of such proceedings shall be assessed against the benefited lands.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §465.34 in 1989 Code to §468.633 in 1989 Code Supplement

**468.634 Petition to combine with established district.**

Upon receipt of a petition, signed by the owners of the lands served by a mutual drain, requesting that such drain be combined with an established drainage district, the board shall hold a hearing with due notice to the owners of all lands affected by said mutual drain, and if the board finds it desirable it may by resolution make such mutual drains a part of the established district. Such hearing and resolution may be continued as the board deems necessary for the collection of additional information as provided in section 468.633. Such combination with an established district shall constitute dissolution of the mutual drain, and shall be so recorded, after which such mutual drain shall be a part of the district drain in all respects.

89 Acts, ch 126, §2, 3 SF 479  
 Transferred from §465.35 in 1989 Code to §468.634 in 1989 Code Supplement

## CHAPTER 470

### LIFE CYCLE COST ANALYSIS OF PUBLIC FACILITIES

#### 470.7 Life cycle cost analysis—approval.

The public agency responsible for the new construction or renovation of a public facility shall submit a copy of the life cycle cost analysis for review by the state building code commissioner who shall consult with the department of natural resources. If the public agency is also a state agency under section 19.34, comments by the department of natural resources or the state building code commissioner, including any recommendation for changes in the analysis, shall, within thirty days of receipt of the analysis, be forwarded in writing to the public agency. If either the department or the commissioner disagrees with any aspects of the life cycle cost analysis, the public agency affected shall timely respond in writing to the state building code commissioner and the department of natural resources. The response shall indicate whether the agency intends to implement the recommendations and, if the agency does not intend to implement them, the public agency shall present its reasons. The reasons may include, but are not limited to, a description of the purpose of the facility or renovation, preservation of historical architectural features, architectural and site considerations, and health and safety concerns.

Within thirty days of receipt of the response of the public agency affected, the department, the commissioner, or both, shall notify in writing the public agency affected of the department's, the commissioner's, or both's agreement or disagreement with the response. In the event of a disagreement, the department, the commissioner, or both, shall at the same time transmit the notification of disagreement with response and related papers to the executive council for resolution pursuant to section 19.34.

89 Acts, ch 315, §28 SF 517  
NEW unnumbered paragraph 2

## CHAPTER 472

### PROCEDURE UNDER POWER OF EMINENT DOMAIN

#### 472.42 Eminent domain—payment to displaced persons.

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

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

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

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

89 Acts, ch 20, §18 SF 152  
Section amended

### 472.54 Federally assisted project and displacing activities—acquisition policies.

If a project or displacing activity has received or will receive federal financial assistance as defined in section 316.1, an acquiring agency shall be guided by the following policies:

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

2. Real property shall be appraised as required by section 472.45 before the initiation of negotiations, and the owner or the owner's designated representative shall be given an opportunity to accompany at least one appraiser of the acquiring agency during an inspection of the property, except that the state department of transportation may prescribe a procedure to waive the appraisal in cases involving the acquisition of property with a low fair market value.

3. Before the initiation of negotiations for real property, the acquiring agency shall establish an amount which it believes to be just compensation for the real property, and shall make a prompt offer to acquire the property for the full amount established by the agency. In no event shall the amount be less than the agency's approved appraisal of the fair market value of the property.

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

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

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

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

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

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

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

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

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

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

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

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

89 Acts, ch 20, §19 SF 152  
NEW section

### **472.55 Buildings, structures, and improvements on federally assisted programs and projects.**

If a program or project has received or will receive federal financial assistance as defined in section 316.1, an acquiring agency shall be guided by the following policies:

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

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

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

89 Acts, ch 20, §20 SF 152  
NEW section

## **CHAPTER 474**

### **UTILITIES DIVISION**

#### **474.1 Creation of division and board—organization.**

A utilities division is created within the department of commerce. The policy-making body for the division is the utilities board which is created within the division. The board is composed of three members appointed by the governor and subject to confirmation by the senate, not more than two of whom shall be from

the same political party. Each member appointed shall serve for six-year staggered terms beginning and ending as provided by section 69.19. Vacancies shall be filled for the unexpired portion of the term in the same manner as full-term appointments are made.

The utilities board shall organize by appointing an executive secretary, who shall take the same oath as the members. The board shall set the salary of the executive secretary within the limits of the pay plan for exempt positions provided for in section 19A.9, subsection 2, unless otherwise provided by the general assembly. The board may employ additional personnel as it finds necessary. Subject to confirmation by the senate, the governor shall appoint a member as the chairperson of the board. The chairperson shall be the administrator of the utilities division. The appointment as chairperson shall be for a two-year term which begins and ends as provided in section 69.19.

As used in this chapter and chapters 475A, 476, 476A, 478, 479, and 479A, "division" and "utilities division" mean the utilities division of the department of commerce.

89 Acts, ch 296, §70 SF 141  
Unnumbered paragraph 3 amended

#### **474.5 Rules, forms and service.**

1. The utilities board may from time to time make or amend its rules or orders as necessary for the preservation of order and the regulation of proceedings before it, including forms of notice and the service thereof, which shall conform as nearly as may be to those in use in the courts of the state.

2. The utilities board shall adopt rules approving the types of city-owned or utility-owned lighting which shall be used in providing energy efficient exterior lighting under sections 364.23 and 476.62.

89 Acts, ch 297, §8 SF 419  
Section amended

#### **474.9 General jurisdiction of utilities board.**

The utilities board has general supervision of all pipelines and all lines for the transmission, sale, and distribution of electrical current for light, heat, and power pursuant to chapters 476, 476A, 478, 479, and 479A, and has other duties as provided by law.

89 Acts, ch 296, §71 SF 141  
Section amended

## **CHAPTER 475A**

### **CONSUMER ADVOCATE**

#### **475A.3 Office—employees—expenses.**

1. *Office.* The office of consumer advocate shall be a separate division of the department of justice and located at the same location as the utilities division of the department of commerce. Administrative support services may be provided to the consumer advocate division by the department of commerce.

2. *Employees.* The consumer advocate may employ attorneys, legal assistants, secretaries, clerks, and other employees the consumer advocate finds necessary for the full and efficient discharge of the duties and responsibilities of the office. The consumer advocate may employ consultants as expert witnesses or technical advisors pursuant to contract as the consumer advocate finds necessary for the full and efficient discharge of the duties of the office. Employees of the consumer advocate division, other than the consumer advocate, are subject to merit employment, except as provided in section 19A.3.

3. *Salaries, expenses, and appropriation.* The salary of the consumer advocate shall be fixed by the attorney general within the salary range set by the general assembly. The salaries of employees of the consumer advocate shall be at rates of compensation consistent with current standards in industry. The reimbursement of expenses for the employees and the consumer advocate is as provided by law. The appropriation for the office of consumer advocate shall be a separate line item contained in the appropriation from the utility trust fund created pursuant to section 476.10.

89 Acts, ch 158, §1 SF 170  
Section amended

#### **475A.4 Utilities division records and employees.**

The consumer advocate has free access to all the files, records, and documents in the office of the utilities division except:

1. Personal information in confidential personnel records of the utilities division.

2. Records which represent and constitute the work product of the general counsel of the utilities board, and records of confidential communications between utilities board members and their general counsel, where the records relate to a proceeding before the board in which the consumer advocate is a party or a proceeding in any state or federal court in which both the board and the consumer advocate are parties.

3. Customer information of a confidential nature which could jeopardize the customer's competitive status and is provided by the utility to the division. Such information shall be provided to the consumer advocate by the division, if the board determines it to be in the public interest.

89 Acts, ch 158, §2 SF 170  
1989 amendment striking former subsection 2 is effective April 1, 1990; 89 Acts, ch 158, §4(2) SF 170  
Subsection 2 stricken and paragraphs a-c of subsection 1 changed to subsections 1-3

## **CHAPTER 476**

### **PUBLIC UTILITY REGULATION**

#### **476.1A Applicability of authority—certain electric utilities.**

Electric public utilities having less than ten thousand customers and electric cooperative corporations and associations are not subject to the rate regulation authority of the board. Such utilities are subject to all other regulation and enforcement activities of the board, including:

1. Assessment of fees for the support of the division.
2. Safety and engineering standards for equipment, operations, and procedures.
3. Assigned area of service.
4. Pilot projects of the board.

However, sections 476.20, 476.21, 476.41 through 476.44, 476.51, 476.56, 476.62, and 476.66 and chapters 476A and 478, to the extent applicable, apply to such electric utilities.

Electric cooperative corporations and associations and electric public utilities exempt from rate regulation under this section 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.

The board of directors or the membership of an electric cooperative corporation or association otherwise exempt from rate regulation may elect to have the cooperative's rates regulated by the board. The board shall adopt rules prescribing the manner in which the board of directors or the membership of an electric cooperative may so elect. If the board of directors or the membership of an electric

cooperative has elected to have the cooperative's rates regulated by the board, after two years have elapsed from the effective date of such election the membership of the electric cooperative may elect to exempt the cooperative from the rate regulation authority of the board.

89 Acts, ch 297, §9 SF 419  
Unnumbered paragraph 2 amended

#### **476.1B Applicability of authority—municipally owned utilities.**

1. Unless otherwise specifically provided by statute, a municipally owned utility is not subject to regulation by the board under this chapter, except for regulatory action pertaining to:

- a. Assessment of fees for the support of the division and the office of consumer advocate, as set forth in section 476.10.
- b. Safety standards.
- c. Assigned areas of service, as set forth in sections 476.22 through 476.26.
- d. Enforcement of civil penalties pursuant to section 476.51.
- e. Disconnection of service, as set forth in section 476.20.
- f. Discrimination against users of renewable energy resources, as set forth in section 476.21.
- g. Encouragement of alternate energy production facilities, as set forth in sections 476.41 through 476.45.
- h. Enforcement of section 476.56.
- i. Enforcement of section 476.66.
- j. Enforcement of section 476.62.

2. Municipally owned utilities shall be required to adhere to the requirements of the following sections of the Code but all rules and regulations to enforce these sections shall lie with each local municipal utility's governing board. The board has no authority concerning these sections as they apply to municipal utilities:

- a. Peak-load management techniques, as set forth in section 476.17.
- b. Promulgation of rules concerning the use of energy conservation strategies, as set forth in section 476.2.

89 Acts, ch 297, §10 SF 419  
Subsection 1, NEW paragraph j

#### **476.3 Complaints—investigation—refunds.**

1. A public utility shall furnish reasonably adequate service at rates and charges in accordance with tariffs filed with the board. When there is filed with the board by any person or body politic, or filed by the board upon its own motion, a written complaint requesting the board to determine the reasonableness of the rates, charges, schedules, service, regulations, or anything done or omitted to be done by a public utility subject to this chapter in contravention of this chapter, the written complaint shall be forwarded by the board to the public utility, which shall be called upon to satisfy the complaint or to answer it in writing within a reasonable time to be specified by the board. Copies of the written complaint forwarded by the board to the public utility and copies of all correspondence from the public utility in response to the complaint shall be provided by the board in an expeditious manner to the consumer advocate. If the board determines the public utility's response is inadequate and there appears to be any reasonable ground for investigating the complaint, the board shall promptly initiate a formal proceeding. If the consumer advocate determines the public utility's response to the complaint is inadequate, the consumer advocate may file a petition with the board which shall promptly initiate a formal proceeding if the board determines that there is any reasonable ground for investigating the complaint. The complainant or the public utility also may petition the board to initiate a formal proceeding which petition shall be granted if the board determines that there is any reasonable ground for investigating the complaint. The formal proceeding may be

initiated at any time by the board on its own motion. If a proceeding is initiated upon petition filed by the consumer advocate, complainant, or the public utility, or upon the board's own motion, the board shall set the case for hearing and give notice as it deems appropriate. When the board, after a hearing held after reasonable notice, finds a public utility's rates, charges, schedules, service, or regulations are unjust, unreasonable, discriminatory, or otherwise in violation of any provision of law, the board shall determine just, reasonable, and nondiscriminatory rates, charges, schedules, service, or regulations to be observed and enforced.

2. If, as a result of a review procedure conducted under section 476.31, a review conducted under section 476.32, a special audit, an investigation by division staff, or an investigation by the consumer advocate, a petition is filed with the board by the consumer advocate, alleging that a utility's rates are excessive, the disputed amount shall be specified in the petition. The 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 filing of the petition in excess of rates or charges finally determined by the board to be lawful. If upon hearing the board finds that the utility's 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, and 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.

3. A determination of utility rates by the board pursuant to this section that is based upon a departure from previously established regulatory principles shall apply prospectively from the date of the decision.

89 Acts, ch 59, §1 SF 229; 89 Acts, ch 97, §1 SF 260  
Subsections 1 and 2 amended

#### **476.6 Changes in rates, charges, schedules and regulations—supply and cost review—water costs for fire protection.**

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. However, if an application presents no material issue of fact subject to dispute, and the board determines that the application violates a relevant statute, or is not in substantial compliance with a board rule lawfully adopted pursuant to chapter 17A, the application may be rejected by the board without prejudice and without a hearing, provided that the board issues a written order setting forth all of its reasons for rejecting the application. 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.

17. *Comprehensive energy management required for electric utilities.* An electric utility shall not have an increased revenue requirement finally approved under this section unless the utilities board finds that the electric utility has in effect a comprehensive energy management program which meets the primary objectives of section 476A.6, subsection 4.

18. *Water costs for fire protection in certain cities.*

a. *Application.* A city furnished water by a public utility subject to rate regulation may apply to the board for inclusion of all or a part of the costs of fire hydrants or other improvements, maintenance, and operations for the purpose of providing adequate water production, storage, and distribution for public fire protection in the rates or charges assessed to consumers covered by the applicant's fire protection service. The application shall be made in a form and manner approved by or as directed by the board. The applicant shall provide such additional information as the board may require to consider the application.

b. *Review.* The board shall review the application, and may in its discretion consider additional evidence, beyond that supplied in the application or provided by the applicant in response to a request for additional information pursuant to

paragraph "a", including, but not limited to, soliciting oral or written testimony from other interested parties.

c. Notice. Written notice of a proposed rate increase shall be provided by the public utility pursuant to subsection 5, except that notice shall be provided within ninety days of the date of application. Costs of the notice shall be paid for by the applicant.

d. Conditions for approval. As a condition to approving an application to include water-related fire protection costs in the utility's rates or charges, the board shall make an affirmative determination that the following conditions will be met:

(1) That the service area currently charged for fire protection, either directly or indirectly, is substantially the same service area containing those persons who will pay for water-related fire protection through inclusion of such costs within the utility's rates or charges.

(2) That the inclusion of such costs within the utility's rates or charges will not cause substantial inequities among the utility's customers.

(3) That all or a portion of the costs sought to be included in the utility's rates or charges by the applicant are reasonable in the circumstances, and limited to the purposes specified in paragraph "a".

(4) That written notice has been provided pursuant to paragraph "c" and that the costs of the notice have been paid by the applicant.

e. Inclusion within rates or charges. If the board affirmatively determines that the conditions of paragraph "d" are or will be satisfied, the board shall include the reasonable costs in the rates or charges assessed to consumers covered by the applicant's fire protection service.

f. Written order. The board shall issue a written order within six months of the date of application. The written order shall include a recitation of the facts found pursuant to consideration of the application.

89 Acts, ch 58, §1 SF 225; 89 Acts, ch 148, §1 SF 266; 89 Acts, ch 321, §29 HF 779  
 Subsection 7 amended  
 NEW subsections 17 and 18

#### **476.10 Investigations—expense—appropriation.**

When the board deems it necessary in order to carry out the duties imposed upon it by this chapter for the purpose of determining rate matters to investigate the books, accounts, practices, and activities of, or make appraisals of the property of any public utility, or to render any engineering or accounting services to any public utility, or to review the operations or annual reports of the public utility under section 476.31 or 476.32, or to evaluate a proposal for reorganization under section 476.73, the public utility shall pay the expense reasonably attributable to the investigation, appraisal, service, or review. The board shall ascertain the expenses including certified expenses incurred by the consumer advocate division of the department of justice directly chargeable to the public utility under section 475A.6, and shall render a bill to the public utility, either at the conclusion of the investigation, appraisal, services, or review, or from time to time during its progress, which bill is notice of the assessment and shall demand payment. The total amount of such expense in any one calendar year, for which any public utility shall become liable, shall not exceed two-tenths of one percent of its gross operating revenues derived from intrastate public utility operations in the last preceding calendar year.

The board shall ascertain the total of the division's expenditures during each year which are reasonably attributable to the performance of its duties under this chapter. The board shall add to this total the certified expenses of the consumer advocate as provided under section 475A.6 and shall deduct all amounts chargeable directly to any specific utility under any law. The remainder shall be assessed by the board to the public utilities in proportion to their respective gross operating

revenues during the last calendar year derived from intrastate public utility operations and may be assessed by the board on a quarterly basis. Assessments may be made quarterly based upon estimates of the utilities division's and the consumer advocate's expenditures for the fiscal year. Beginning with the fiscal year beginning July 1, 1987, the first assessment for any fiscal year may be made by the utilities division by May 15 of the preceding fiscal year and shall be paid by the utility on or before the following July 1. Not more than ninety days following the close of the fiscal year, the utilities division shall conform the amount of the prior fiscal year's assessments to the requirements of this section. Public utilities exempt from rate regulation under this chapter shall not be assessed for remainder expenses incurred during review of rate-regulated public utilities under section 476.31 or 476.32, but such remainder expenses shall be assessed proportionally as provided in this section among only the rate-regulated public utilities. The total amount which may be assessed to the public utilities under authority of this paragraph shall not exceed two-tenths of one percent of the total gross operating revenues of the public utilities during the calendar year derived from intrastate public utility operations. However, the total amount which may be assessed in any one calendar year to a public utility under this section shall not exceed three-tenths of one percent of the utility's total gross operating revenues derived from intrastate public utility operation in the last preceding year. For public utilities exempted from rate regulation under this chapter, the assessments under this paragraph shall be computed at one-half the rate used in computing the assessment for other utilities.

Each utility shall pay the division the amount assessed against it within thirty days from the time the division mails notice to it of the amount due unless it shall file with the board objections in writing setting out the grounds upon which it claims that such assessment is excessive, erroneous, unlawful, or invalid. Upon the filing of such objections the board shall set the matter down for hearing and issue its order in accordance with its findings in such proceeding, which order shall be subject to review in the manner provided in this chapter. All amounts collected by the division pursuant to the provisions of this section shall be deposited with the state treasurer and credited to the general fund of the state. Such amounts shall be spent in accordance with the provisions of chapter 8.

Whenever the board shall deem it necessary in order to carry out the duties imposed upon it in connection with rate regulation under section 476.6, investigations under section 476.3, or review proceedings under section 476.31, the board may employ additional temporary or permanent staff, or may contract with persons who are not state employees for engineering, accounting, or other professional services, or both. The costs of these additional employees and contract services shall be paid by the public utility whose rates are being reviewed in the same manner as other expenses are paid under this section. The board shall increase quarterly assessments specified in unnumbered paragraph two, by amounts necessary to enable the board to hire additional staff and contract for services under this section. The authority to hire additional temporary or permanent staff that is granted to the board by this section shall not be subject to limitation by any administrative or executive order or decision that restricts the number of state employees or the filling of employee vacancies, and shall not be subject to limitation by any law of this state that restricts the number of state employees or the filling of employee vacancies unless that law is made applicable to this section by express reference to this section. Before the board expends or encumbers an amount in excess of the funds budgeted for rate regulation and before the board increases quarterly assessments pursuant to this paragraph, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the expenses exceed the funds budgeted by the

general assembly to the board for rate regulation and that the board does not have other funds from which the expenses can be paid. Upon approval of the director of the department of management the board may expend and encumber funds for the excess expenses, and increase quarterly assessments to raise the additional funds.

Fees paid to the utilities division shall be deposited in a utilities trust fund. The treasurer of state shall hold these funds in an account that shall be established in the names of the administrator of the utilities division and the consumer advocate for the payment, upon appropriation by the general assembly, of the expenses of the utilities division and the consumer advocate division of the department of justice. This fund is subject at all times to the warrant of the director of revenue and finance, drawn upon written requisition of the administrator of the utilities division, the administrator's designated representative, the consumer advocate, or the consumer advocate's designated representative for the payment of all salaries and other expenses necessary to carry out the duties of the utilities division or the consumer advocate division. Subject to this section, the utilities division or the consumer advocate division may keep on hand with the treasurer of state funds in excess of the current needs of the utilities division or the consumer advocate 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 divisions. No part of the funds held by the treasurer of state for the account 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 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.

The administrator and consumer advocate shall account for receipts and disbursements according to the separate duties imposed upon the utilities and consumer advocate divisions by the laws of this state and each separate duty shall be fiscally self-sustaining.

89 Acts, ch 103, §1 SF 373; 89 Acts, ch 296, §72 SF 141; 89 Acts, ch 321, §30 HF 779

See Code editor's note to §22.7

Unnumbered paragraphs 1 and 4 amended

### **476.33 Rules governing hearings.**

1. The board shall adopt rules pursuant to chapter 17A to provide for the completion of proceedings under section 476.3 within ten months after the date of the filing of a petition under section 476.3, subsection 2, and to provide for the completion of proceedings under section 476.6 within ten months after the date of filing of the new or changed rates, charges, schedules, or regulations under that section. These rules shall include reasonable time limitations for the submission or completion of comments and testimony, and exhibits, briefs, and hearings, and may provide for the granting of additional time upon the request of a party to the proceeding or division staff for good cause shown.

2. Additional time granted to a party or to division staff under subsection 1 shall not extend the amount of time for which a utility is required to file a bond or other undertaking conditioned upon refund under section 476.3, subsection 2.

3. If in a proceeding under section 476.6 additional time is granted to a party or division staff under subsection 1, the board may extend the ten-month period during which a utility is prohibited from placing its entire rate increase request into effect under section 476.6, but an extension shall not exceed the aggregate amount of all additional time granted under subsection 1.

4. The board shall adopt rules that require the board, in rate regulatory proceedings under sections 476.3 and 476.6, to consider the use of the most current test period possible in determining reasonable and just rates, subject only to the availability of existing and verifiable data respecting costs and revenues, and in addition to consider verifiable data that exists as of the date of commence-

ment of the proceedings respecting known and measurable changes in costs not associated with a different level of revenue, and known and measurable revenues not associated with a different level of costs, that are to occur at any time within twelve months after the date of commencement of the proceedings. For purposes of this subsection, a proceeding commences under section 476.6 upon the filing date of new or changed rates, charges, schedules or regulations. This subsection does not limit the authority of the board to consider other evidence in proceedings under sections 476.3 and 476.6.

89 Acts, ch 97, §2 SF 260  
Subsection 1 amended

#### **476.52 Management efficiency.**

It is the policy of this state that a public utility shall operate in an efficient manner. If the board determines in the course of a proceeding conducted under section 476.3 or 476.6 that a utility is operating in an inefficient manner, or is not exercising ordinary, prudent management, or in comparison with other utilities in the state the board determines that the utility is performing in a less beneficial manner than other utilities, the board may reduce the level of profit or adjust the revenue requirement for the utility to the extent the board believes appropriate to provide incentives to the utility to correct its inefficient operation. If the board determines in the course of a proceeding conducted under section 476.3 or 476.6 that a utility is operating in such an extraordinarily efficient manner that tangible financial benefits result to the ratepayer, the board may increase the level of profit or adjust the revenue requirement for the utility. In making its determination under this section, the board may also consider a public utility's pursuit of energy efficiency programs. The board shall adopt rules for determining the level of profit or the revenue requirement adjustment that would be appropriate.

The board shall also adopt rules establishing a methodology for an analysis of a utility's management efficiency.

89 Acts, ch 297, §11 SF 419  
Unnumbered paragraph 1 amended

#### **476.62 Energy efficient lighting required.**

All public utility-owned exterior flood lighting, including but not limited to street and security lighting, shall be replaced when worn-out exclusively with high pressure sodium lighting or lighting with equivalent or better energy efficiency as approved in rules adopted by the board.

89 Acts, ch 297, §12 SF 419  
NEW section

#### **476.63 Energy conservation and efficiency programs.**

The division shall consult with the energy and geological resources division of the department of natural resources in the development and implementation of public utility energy conservation and efficiency programs.

89 Acts, ch 297, §13 SF 419  
NEW section

**476.64** Reserved.

**476.67 through 476.70** Reserved.

#### PUBLIC UTILITY AFFILIATES

#### **476.71 Purpose.**

It is the intent of the general assembly that a public utility should not directly or indirectly include in regulated rates or charges any costs or expenses of an affiliate engaged in any business other than that of utility business unless the affiliate provides goods or services to the public utility. The costs that are included

should be reasonably necessary and appropriate for utility business. It is also the intent of the general assembly that a public utility should only provide nonutility services in a manner that minimizes the possibility of cross-subsidization or unfair competitive advantage.

89 Acts, ch 103, §2 SF 373  
NEW section

#### **476.72 Definitions.**

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

1. *"Affiliate"* means a party that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a rate-regulated public utility.

2. *"Control"* means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an enterprise through ownership, by contract or otherwise.

3. *"Nonutility service"* includes the sale, lease, or other conveyance of commercial and residential gas or electric appliances, interior lighting systems and fixtures, or heating, ventilating, or air conditioning systems and component parts or the servicing, repair, or maintenance of such equipment.

4. *"Public utility"* includes only gas or electric rate-regulated public utilities and rate-regulated telephone utilities providing local exchange telecommunication service.

5. *"Utility business"* means the generation or transmission of electricity or furnishing of gas or furnishing electricity or furnishing rate-regulated communications services to the public for compensation.

89 Acts, ch 103, §3 SF 373  
NEW section

#### **476.73 Affiliate records.**

1. *Access to records.* Every public utility and affiliate through the public utility shall provide the board with access to books, records, accounts, documents, and other data and information which the board finds necessary to effectively implement and effectuate the provisions of this chapter.

2. *Separate records.* The board may require affiliates of a public utility to keep separate records and the board may provide for the examination and inspection of the books, accounts, papers, and records, as may be necessary to enforce this chapter.

3. *Allocation permitted.* The board may inquire as to and prescribe, for ratemaking purposes, the allocation of capitalization, earnings, debts, and expenses related to ownership, operation, or management of affiliates.

89 Acts, ch 103, §4 SF 373  
NEW section

#### **476.74 Affiliate information required to be filed.**

1. *Goods and services.* All contracts or arrangements providing for the furnishing or receiving of goods and services including but not limited to the furnishing or receiving of management, supervisory, construction, engineering, accounting, legal, financial, marketing, data processing, or similar services made or entered into on or after July 1, 1989, between a public utility and any affiliate shall be filed annually with the board.

2. *Sales, purchases, and leases.* All contracts or arrangements for the purchase, sale, lease, or exchange of any property, right, or thing made or entered into on or after July 1, 1989, between a public utility and any affiliate shall be filed annually with the board.

3. *Loans.* All contracts or arrangements providing for any loan of money or an extension or renewal of any loan of money or any similar transaction made or entered into on or after July 1, 1989, between a public utility and any affiliate,

whether as guarantor, endorser, surety, or otherwise, shall be filed annually with the board.

4. *Verified copies required.* Every public utility shall file with the board a verified copy of the contract or arrangement referred to in this section, or a verified summary of the unwritten contract or arrangement, and also of all the contracts and arrangements or a verified summary of the unwritten contracts or arrangements, whether written or unwritten, entered into prior to July 1, 1989, and in force and effect at that time. Any contract or agreement determined by the board to be a confidential record pursuant to section 22.7 shall be returned to the public utility filing the confidential record within sixty days after the contract or agreement is filed.

5. *Exemption.* The provisions of this section requiring filing of contracts or agreements with the board shall not apply to transactions with an affiliate where the amount of consideration involved is not in excess of fifty thousand dollars or five percent of the capital equity of the utility, whichever is smaller. However, regularly recurring payments under a general or continuing arrangement which aggregate a greater annual amount shall not be broken down into a series of transactions to come within this exemption. In any proceeding involving the rates, charges or practices of the public utility, the board may exclude from the accounts of the public utility any unreasonable payment or compensation made pursuant to any contract or arrangement which is not required to be filed under this subsection.

6. *Continuing jurisdiction.* The board shall have the same jurisdiction over modifications or amendments of contracts or arrangements in this section as it has over the original contracts or arrangements. Any modification or amendment of contracts or arrangements shall also be filed annually with the board.

7. *Sanction.* For ratemaking purposes, the board may exclude the payment or compensation to an affiliate or adjust the revenue received from an affiliate associated with any contract or arrangement required to be filed with the board if the contract or arrangement is not so filed.

8. *Alternative information.* The board shall consult with other state and federal regulatory agencies for the purpose of eliminating duplicate or conflicting filing requirements and may adopt rules which provide that comparable information required to be filed with other state or federal regulatory agencies may be accepted by the board in lieu of information required by this section.

9. *Reasonableness required.* In any proceeding, whether upon the board's own motion or upon application or complaint involving the rates, charges, or practices of any public utility, the board, for ratemaking purposes may exclude from the accounts of the public utility or adjust any payment or compensation related to any transaction with an affiliate for any services rendered or for any property or service furnished or received, as described in this section, under contracts or arrangements with an affiliate unless and upon inquiry the public utility shall establish the reasonableness of the payment or compensation.

10. *Exemption by rule or waiver.* The board may adopt rules which exempt any public utility or class of public utility or class of contracts or arrangements from this section or waive the requirements of this section if the board finds that the exemption or waiver is in the public interest.

<sup>89</sup> Acts, ch 103, §5 SF 373  
NEW section

#### **476.75 Audits required.**

The board may periodically retain a nationally or regionally recognized independent auditing firm to conduct an audit of the transactions between a public utility and its affiliates. An affiliate transaction audit shall not be conducted more frequently than every three years, unless ordered by the board for good cause. The cost of the audit shall be paid by the public utility to the independent

auditing firm and shall be included in its regulated rates and charges, unless otherwise ordered by the board for good cause after providing the public utility the opportunity for a hearing on the board's decision.

89 Acts, ch 103, §6 SF 373  
NEW section

#### **476.76 Reorganization defined.**

For purposes of this division unless the context otherwise requires, "reorganization" means either of the following:

1. The acquisition, sale, lease, or any other disposition, directly or indirectly, including by merger or consolidation, of the whole or any substantial part of a public utility's assets.
2. The purchase or other acquisition or sale or other disposition of the controlling capital stock of any public utility, either directly or indirectly.

89 Acts, ch 103, §7 SF 373  
NEW section

#### **476.77 Time and standards for review.**

1. A reorganization shall not take place if the board disapproves. Prior to reorganization, the applicant shall file with the board a proposal for reorganization with supporting testimony and evidence to establish that the reorganization is not contrary to the interests of the public utility's ratepayers and the public interest.

2. A proposal for reorganization shall be deemed to have been approved unless the board disapproves the proposal within forty-five days after its filing. However, the board shall not disapprove a proposal for reorganization without providing for notice and opportunity for hearing. The notice of hearing shall be provided no later than twenty-one days after the proposal for reorganization has been filed.

3. In its review of a proposal for reorganization, the board may consider all of the following:

- a. Whether the board will have reasonable access to books, records, documents, and other information relating to the public utility or any of its affiliates.
- b. Whether the public utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is impaired.
- c. Whether the ability of the public utility to provide safe, reasonable, and adequate service is impaired.
- d. Whether ratepayers are detrimentally affected.
- e. Whether the public interest is detrimentally affected.

4. The board may adopt rules which exempt any public utility or class of public utility or class of reorganization from this section if the board finds that with respect to the public utility or class of public utility or class of reorganization review is not necessary in the public interest. The board may adopt rules necessary to protect the interest of the customers of the exempt public utility. These rules may include, but are not limited to, notification of a proposed sale or transfer of assets or stock. The board may waive the requirements of this section, if the board finds that board review is not necessary in the public interest.

89 Acts, ch 103, §8 SF 373  
NEW section

#### **476.78 Cross-subsidization prohibited.**

A rate-regulated gas or electric public utility shall not directly or indirectly include any costs or expenses attributable to providing nonutility service in regulated rates or charges.

89 Acts, ch 103, §9 SF 373  
NEW section

#### **476.79 Provision of nonutility service.**

1. A rate-regulated gas or electric public utility providing any nonutility

service to its customers shall keep and render to the board separate records of the nonutility service. The board may provide for the examination and inspection of the books, accounts, papers, and records of the nonutility service, as may be necessary, to enforce any provisions of this chapter.

2. The board shall adopt rules which specify the manner and form of the accounts relating to providing nonutility services which the rate-regulated gas or electric utility shall maintain.

89 Acts, ch 103, §10 SF 373  
NEW section

#### **476.80 Additional requirements.**

A rate-regulated gas or electric public utility which engages in a systematic marketing effort as defined by the board, other than on an incidental or casual basis, to promote the availability of nonutility service from the public utility shall make available at reasonable compensation on a nondiscriminatory basis to all persons engaged primarily in providing the same competitive nonutility services in that area all of the following services to the same extent utilized by the public utility in connection with its nonutility services:

1. Access to and use of the public utility's customer lists.
2. Access to and use of the public utility's billing and collection system.
3. Access to and use of the public utility's mailing system.

89 Acts, ch 103, §11 SF 373  
NEW section

#### **476.81 Audit required.**

The board may periodically retain a nationally or regionally recognized independent auditing firm to conduct an audit of the nonutility services provided by a rate-regulated gas or electric public utility subject to the provisions of section 476.80. A nonutility service audit shall not be conducted more frequently than every three years, unless ordered by the board for good cause. The cost of the audit shall be paid by the public utility to the independent auditing firm and shall be included in its regulated rates and charges, unless otherwise ordered by the board for good cause after providing the public utility the opportunity for a hearing on the board's decision.

89 Acts, ch 103, §12 SF 373  
NEW section

#### **476.82 Exemption—energy efficiency.**

Notwithstanding any language to the contrary, nothing in this division shall prohibit a public utility from participating in or conducting energy efficiency projects or programs established or approved by the board or required by statute. A public utility participating in or conducting energy efficiency projects or programs established or approved by the board or required by statute shall not be subject to the provisions of sections 476.80 and 476.81 for those energy efficiency projects or programs.

89 Acts, ch 103, §13 SF 373  
NEW section

#### **476.83 Complaints.**

Any person may file a written complaint with the board requesting the board to determine compliance by a rate-regulated gas or electric utility with the provisions of section 476.78, 476.79, or 476.80 or any validly adopted rules to implement those sections. If the board determines there is any reasonable ground to investigate the complaint, the board shall promptly initiate formal complaint proceedings. The formal proceeding may be initiated at any time by the board on its own motion.

89 Acts, ch 103, §14 SF 373  
NEW section

**476.84 through 476.90** Reserved.

ALTERNATIVE OPERATOR SERVICES

**476.91 Alternative operator services.**

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

a. "*Alternative operator services company*" means a nongovernmental company which receives more than half of its Iowa intrastate telecommunications services revenues from calls placed by end-user customers from telephones other than ordinary residence or business telephones. The definition is further limited to include only companies which provide operator assistance, either through live or automated intervention, on calls placed from other than ordinary residence or business telephones, and does not include services provided under contract to rate-regulated local exchange utilities.

b. "*Contracting entity*" means an entity providing telephones other than ordinary residence or business telephones for use by end-user customers which has contracted with an alternative operator services company to provide telecommunications services to those telephones.

c. "*End-user customer*" means a person who places a local or toll call.

d. "*Other than ordinary residence or business telephones*" means telephones other than the residence or business telephones of the customary users of the telephones, including but not limited to pay telephones and telephones in motel, hotel, hospital, and college dormitory rooms.

2. *Jurisdiction.* Notwithstanding any finding by the board that a service or facility is subject to competition and should be deregulated pursuant to section 476.1, all intrastate telecommunications services provided by alternative operator services companies to end-user customers, using other than ordinary residence or business telephones, are subject to the jurisdiction of the board and shall be rendered pursuant to tariffs approved by the board. Alternative operator services companies shall be subject to all requirements and sanctions provided in this chapter. Contracting entities shall be subject to the requirements of any board regulations concerning telecommunications services provided by alternative operator services companies.

3. *Requirements.* The board shall adopt and enforce requirements for the provision of services by alternative operator services companies and contracting entities.

4. *Billing by local exchange utilities.* Notwithstanding any finding by the board that a service or facility is subject to competition and should be deregulated pursuant to section 476.1, a regulated local exchange utility shall not perform billing and collection functions relating to regulated telecommunications services provided by an alternative operator services company, unless the alternative operator services company has filed a statement with the local exchange utility signed by a corporate officer, or other authorized person having personal knowledge, that all regulated telecommunications services to be billed shall be rendered pursuant to tariffs approved by the board.

89 Acts, ch 95, §1 SF 231  
NEW section

## CHAPTER 477

### TELEGRAPH AND TELEPHONE LINES AND COMPANIES— CABLE SYSTEMS

**477.9A Deregulated services.**

A telegraph or telephone company whose services are deregulated by the board under section 476.1 may use public notice as a means of conveying terms and

conditions to customers where identification of those customers is infeasible or impractical. Public notice may also be used to convey changes in terms and conditions, other than price increases or limitations of liability, to all other customers, but only if those customers were put on notice that this means would be used to convey subsequent changes. Notwithstanding section 477.7, when services are deregulated by the board under section 476.1, a telegraph or telephone company, in any contract, agreement, or by means of public notice, may reasonably limit its liability under section 477.7 in the course of providing the deregulated communications services to its customers, except for acts of willful misconduct. However, this section shall not be construed to allow a greater limitation on liability than exists in any contract or approved tariff as of the effective date of the deregulation of the services.

89 Acts, ch 321, §31 HF 779  
Section repealed May 1, 1990; 89 Acts, ch 321, §42 HF 779  
NEW section

## CHAPTER 477B

### ENHANCED 911 EMERGENCY TELEPHONE COMMUNICATION SYSTEMS

#### **477B.3 Joint 911 service board—911 service plan—implementation—waivers.**

1. *Joint 911 service boards to submit plans.* The board of supervisors of each county shall establish a joint 911 service board not later than January 1, 1989. Each political subdivision of the state having a public safety agency serving territory within the county is entitled to voting membership on the joint 911 service board. Each private safety agency operating within the area is entitled to nonvoting membership on the board. A township which does not operate its own public safety agency, but contracts for the provision of public safety services, is not entitled to membership on the joint 911 service board, but its contractor is entitled to membership according to the contractor's status as a public or private safety agency. The joint 911 service board shall develop an enhanced 911 service plan encompassing at minimum the entire county, unless an exemption is granted by the administrator permitting a smaller E911 service area. The administrator may grant a discretionary exemption from the single county minimum service area requirement based upon an E911 joint service board's or other E911 service plan operating authority's presentation of evidence which supports the requested exemption if the administrator finds that local conditions make adherence to the minimum standard unreasonable or technically infeasible, and that the purposes of this chapter would be furthered by granting an exemption. The minimum size requirement is intended to prevent unnecessary duplication of public safety answering points and minimize other administrative, personnel, and equipment expenses. An E911 service area must encompass a geographically contiguous area. No exemption shall be granted from the contiguous area requirement. The administrator may order the inclusion of a specific territory in an adjoining E911 service plan area to avoid the creation by exclusion of a territory smaller than a single county not serviced by surrounding E911 service plan areas upon request of the joint 911 service board representing the territory. The E911 service plan operating authority shall submit the plan on or before March 1, 1989, to all of the following:

- a. The division.
- b. Public and private safety agencies in the enhanced 911 service area.
- c. Providers affected by the enhanced 911 service plan.

The division shall prepare a statewide summary of the plans submitted and present the summary to the legislature on or before June 1, 1989.

2. *Compliance waivers available in limited circumstances.* The administrator may extend, in whole or in part, the time for implementation of an enhanced 911 service plan beyond the scheduled plan of implementation, by issuance of a compliance waiver. The waiver shall be based upon a joint 911 service board's presentation of evidence which supports an extension if the administrator finds that local conditions make implementation financially unreasonable or technically infeasible by the originally scheduled plan of implementation. The compliance waiver shall be for a set period of time, and subject to review and renewal or denial of renewal upon its expiration. The waiver may cover all or a portion of a 911 service plan's enhanced 911 service area to facilitate phased implementation when possible. The granting of a compliance waiver does not create a presumption that the identical or similar waiver will be extended in the future. Consideration of compliance waivers shall be on a case-by-case basis.

3. *Chapter 28E agreement—alternative to joint 911 service board.* A legal entity created pursuant to chapter 28E by a county or counties, other political divisions, and public or private agencies to jointly plan, implement, and operate a county-wide, or larger, enhanced 911 service system may be substituted for the joint 911 service board required under subsection 1.

An alternative legal entity created pursuant to chapter 28E as a substitute for a joint 911 service board, as permitted by this subsection, may be created by either:

a. Agreement of the parties entitled to voting membership on a joint 911 service board.

b. Agreement of the members of a joint 911 service board.

An alternative chapter 28E entity has all of the powers of a joint 911 service board and any additional powers granted by the agreement. As used in this chapter, "*joint 911 service board*" includes an alternative chapter 28E entity created for that purpose, except as specifically limited by the chapter 28E agreement or unless clearly provided otherwise in this chapter. A chapter 28E agreement related to E911 service shall permit the participation of a private safety agency or other persons allowed to participate in a joint 911 service board, but the terms, scope, and conditions of participation are subject to the chapter 28E agreement.

4. *Participation in joint E911 service board required.* A political subdivision or state agency having a public safety agency within its territory or jurisdiction shall participate in a joint E911 service board and cooperate in preparing the E911 service plan.

89 Acts, ch 168, §1, 2 HF 735

Subsection 1, unnumbered paragraph 1 amended

Subsection 3, NEW unnumbered paragraph 2, paragraphs a and b, and unnumbered paragraph 3

#### **477B.6 Referendum on E911 in proposed service area.**

1. Before a joint E911 service board may request imposition of the surcharge by the administrator, the board shall submit the following question to voters, as provided in subsection 2, in the proposed E911 service area, and the question shall receive a favorable vote from a simple majority of persons submitting valid ballots on the following question within the proposed E911 service area:

"Should enhanced 911 emergency telephone service be funded, in whole or in part, by a surcharge of (up to twenty-five cents) per month per telephone access line collected as part of each telephone subscriber's monthly phone bill if provided within (description of the proposed E911 service area)?"

2. The referendum required as a condition of the surcharge imposition in subsection 1 shall be conducted using the following electoral mechanism:

At the request of the joint E911 service board a county commissioner of elections shall include the question on the next eligible general election ballot in each electoral precinct to be served, in whole or in part, by the proposed E911 service area, provided the request is timely submitted to permit inclusion. The question may be included in the next election in which all of the voters in the proposed E911 service area will be eligible to vote on the same day, such as a primary, general, or school board election. The county commissioner of elections shall report the results to the joint E911 service board. The joint E911 service board shall compile the results if subscribers from more than one county are included within the proposed service area. The joint E911 service board shall announce whether a simple majority of the compiled votes reported by the commissioner approved the referendum question.

3. The secretary of state, in consultation with the administrator of the office of disaster services of the department of public defense, shall adopt rules for the conduct of joint E911 service referendums as required by and consistent with subsections 1 and 2.

89 Acts, ch 168, §3 HF 735

Applicability tied to referendum approval date; 89 Acts, ch 168, §7 HF 735

Section amended

#### **477B.7 Funding—E911 service surcharge.**

When an E911 service plan is implemented, the costs of providing E911 service within an E911 service area are the responsibility of the joint E911 service board and the member political subdivisions. Costs in excess of the amount raised by imposition of the E911 service surcharge provided for under subsection 1, shall be paid by the joint E911 service board from such revenue sources allocated among the member political subdivisions as determined by the joint E911 service board. Funding is not limited to the surcharge, and surcharge revenues may be supplemented by other permissible local and state revenue sources. A joint 911 service board shall not commit a political subdivision to appropriate property tax revenues to fund an E911 service plan without the consent of the political subdivision. A joint 911 service board may approve a 911 service plan, including a funding formula requiring appropriations by participating political subdivisions, subject to the approval of the funding formula by each political subdivision. However, a political subdivision may agree in advance to appropriate property tax revenues or other moneys according to a formula or plan developed by an alternative chapter 28E entity.

##### *1. Local E911 service surcharge imposition.*

*a.* To encourage local implementation of E911 service, one source of funding for E911 emergency telephone communication systems shall come from a surcharge of twenty-five cents, per month, per access line on each access line subscriber, except as provided in subsection 5. The surcharge shall be imposed by order of the administrator as follows:

(1) The administrator shall notify a provider scheduled to provide exchange access line service to an E911 service area, that implementation of an E911 service plan has been approved by the joint 911 service board and by the service area referendum, and that collection of the surcharge is to begin within one hundred days.

(2) The notice shall be provided at least one hundred days before the surcharge must be billed for the first time.

*b.* The surcharge shall terminate at the end of twenty-four months, unless either, or both, of the following conditions is met:

(1) E911 service is initiated for all or a part of the E911 service area.

(2) An extension is granted by the administrator for good cause.

*c.* The surcharge shall terminate at the end of twenty-four months if the joint E911 service plan has not been approved by the administrator within eighteen

months of the original notice to the provider to impose the surcharge, and shall not be reimposed until a service plan is approved by the administrator and the administrator gives providers notice as required by paragraph "a", subparagraphs (1) and (2).

2. *Surcharge collected by providers.* The surcharge shall be collected as part of the access line service provider's periodic billing to a subscriber. In compensation for the costs of billing and collection, the provider may retain one percent of the gross surcharges collected. If the compensation is insufficient to fully recover a provider's costs for billing and collection of the surcharge, the deficiency shall be included in the provider's costs for ratemaking purposes to the extent it is reasonable and just under section 476.6. The surcharge shall be remitted to the E911 service operating authority for deposit into the E911 service fund quarterly by the provider. A provider is not liable for an uncollected surcharge for which the provider has billed a subscriber but not been paid. The surcharge shall appear as a single line item on a subscriber's periodic billing entitled, "E911 emergency telephone service surcharge". The E911 service surcharge is not subject to sales or use tax.

3. *Maximum limit per subscriber billing for surcharge.* An individual subscriber shall not be required to pay on a single periodic billing the surcharge on more than one hundred access lines, or their equivalent, in an E911 service area. A subscriber shall pay the surcharge in each E911 service area in which the subscriber receives access line service.

4. *E911 service fund.* Each joint E911 service board shall establish and maintain as a separate account an E911 service fund. Any funds remaining in the account at the end of each fiscal year shall not revert to the general funds of the member political subdivisions, except as provided in subsection 5, but shall remain in the E911 service fund. Moneys in an E911 service fund may only be used for nonrecurring and recurring costs of the E911 service plan as approved by the administrator, as those terms are defined by section 477B.2.

5. *Use of moneys in fund—priority and limitations on expenditure.* Moneys deposited in the E911 service fund shall be used for the following, in order of priority:

a. Money shall first be spent for actual recurring costs of operating the E911 service plan.

b. If money remains in the fund after fully paying for recurring costs incurred in the preceding year, the remainder may be spent to pay for nonrecurring costs, not to exceed actual nonrecurring costs as approved by the administrator.

c. If money remains in the fund after fully paying obligations under subsections 1 and 2, the remainder may be accumulated in the fund as a carryover operating surplus. If the surplus is greater than twenty-five percent of the approved annual operating budget for the next year, the administrator shall reduce the surcharge by an amount calculated to result in a surplus of no more than twenty-five percent of the planned annual operating budget. After nonrecurring costs have been paid, if the surcharge is less than twenty-five cents and the fund surplus is less than twenty-five percent of the approved annual operating budget, the administrator shall, upon application of the joint E911 service board, increase the surcharge in an amount calculated to result in a surplus of twenty-five percent of the approved annual operating budget. In no case may the surcharge exceed twenty-five cents per month, per access line. The surcharge may only be adjusted once in a single year, upon one hundred days' prior notice to the provider.

6. *Limitation of actions—provider not liable on cause of action related to provision of 911 services.* A claim or cause of action does not exist based upon or arising out of an act or omission in connection with a provider's participation in

an E911 service plan or provision of 911 or local exchange access service, unless the act or omission is determined to be willful and wanton negligence.

89 Acts, ch 168, §4-6 HF 735  
Unnumbered paragraph 1 amended  
Subsection 1, paragraph a, subparagraph (1) amended  
Subsection 1, NEW paragraph c

#### **477B.9 Telecommunications devices for the deaf.**

By January 1, 1990, each county shall provide for the installation and use of at least one telecommunications device for the deaf at a public safety answering point.

89 Acts, ch 157, §1 SF 428  
NEW section

## CHAPTER 478A

### GAS LAMPS

#### **478A.7 Decorative gas lamps.**

1. Commencing January 1, 1979 a person shall not sell or offer for sale in this state a decorative gas lamp manufactured after December 31, 1978.

2. As used in this section "decorative gas lamp" means a device installed for the purpose of producing illumination by burning natural, mixed or liquid petroleum gas and utilizing either a mantle or an open flame, but does not include portable camp lanterns or gas lamps.

3. Persons convicted of violating this section shall be guilty of a simple misdemeanor.

4. Notwithstanding subsection 1, commencing January 1, 1990, a person may sell or offer for sale in this state a decorative gas lamp manufactured after December 31, 1978, if the utilities board within the utilities division of the department of commerce determines, after notice and an opportunity for interested persons to comment at an oral presentation, that the sale or offer for sale of decorative gas lamps does not violate the public interest.

89 Acts, ch 297, §14 SF 419  
NEW subsection 4

## TITLE XIX

### CORPORATIONS

## CHAPTER 490

### IOWA BUSINESS CORPORATION ACT

Chapter effective December 31, 1989; 89 Acts, ch 288, §196 SF 502  
Transition; application to existing corporations; §490.1701-490.1704

#### DIVISION I

#### GENERAL PROVISIONS

#### PART A

#### **490.101 Short title.**

This chapter is entitled and may be cited as the "*Iowa Business Corporation Act*".

89 Acts, ch 288, §1 SF 502  
NEW section

**490.102 Reservation of power to amend or repeal.**

The general assembly has the power to amend or repeal all or part of this chapter at any time and all domestic and foreign corporations subject to this chapter are governed by an amendment or repeal.

89 Acts, ch 288, §2 SF 502  
NEW section

**490.103 through 490.119** Reserved.

## PART B

**490.120 Filing requirements.**

1. A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing.
2. The document must be filed in the office of the secretary of state.
3. The document must contain the information required by this chapter. It may contain other information as well.
4. The document must be typewritten or printed.
5. The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.
6. Except as provided in section 490.1622, subsection 2, the document must be executed by one of the following methods:
  - a. The chairperson of the board of directors of a domestic or foreign corporation, its president, or another of its officers.
  - b. If directors have not been selected or the corporation has not been formed, by an incorporator.
  - c. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.
7. The person executing the document shall sign it and state beneath or opposite the person's signature, the person's name and the capacity in which the person signs. The document may, but need not, contain:
  - a. The corporate seals.
  - b. An attestation by the secretary or an assistant secretary.
  - c. An acknowledgment, verification, or proof.

The secretary of state may accept for filing a document containing a copy of a signature, however made.

8. If the secretary of state has prescribed a mandatory form for the document under section 490.121, the document must be in or on the prescribed form.

9. The document must be delivered to the office of the secretary of state for filing and must be accompanied by the correct filing fee.

89 Acts, ch 288, §3 SF 502  
NEW section

**490.121 Forms.**

1. The secretary of state may prescribe and furnish on request forms including but not limited to the following:
  - a. An application for a certificate of existence.
  - b. A foreign corporation's application for a certificate of authority to transact business in this state.
  - c. A foreign corporation's application for a certificate of withdrawal.
  - d. The annual report.

If the secretary of state so requires, use of these listed forms prescribed by the secretary of state is mandatory.

2. The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use is not mandatory.

89 Acts, ch 288, §4 SF 502  
NEW section

#### 490.122 Filing, service, and copying fees.

1. The secretary of state shall collect the following fees when the documents described in this subsection are delivered to the secretary's office for filing:

DOCUMENT	FEE
a. Articles of incorporation .....	\$ 50
b. Application for use of indistinguishable name .....	\$ 10
c. Application for reserved name .....	\$ 10
d. Notice of transfer of reserved name .....	\$ 10
e. Application for registered name per month or part thereof .....	\$ 2
f. Application for renewal of registered name .....	\$ 20
g. Corporation's statement of change of registered agent or registered office or both .....	No fee
h. Agent's statement of change of registered office for each affected corporation .....	No fee
i. Agent's statement of resignation .....	No fee
j. Amendment of articles of incorporation .....	\$ 50
k. Restatement of articles of incorporation with amendment of articles .....	\$ 50
l. Articles of merger or share exchange .....	\$ 50
m. Articles of dissolution .....	\$ 5
n. Articles of revocation of dissolution .....	\$ 5
o. Certificate of administrative dissolution .....	No fee
p. Application for reinstatement following administrative dissolution .....	\$ 5
q. Certificate of reinstatement .....	No fee
r. Certificate of judicial dissolution .....	No fee
s. Application for certificate of authority .....	\$ 100
t. Application for amended certificate of authority .....	\$ 100
u. Application for certificate of withdrawal .....	\$ 10
v. Certificate of revocation of authority to transact business .....	No fee
w. Annual report .....	\$ 30
x. Articles of correction .....	\$ 5
y. Application for certificate of existence or authorization .....	\$ 5
z. Any other document required or permitted to be filed by this chapter .....	\$ 5

2. The secretary of state shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- a. \$ .50 a page for copying.
- b. \$5.00 for the certificate.

**490.123 Effective time and date of documents.**

1. Except as provided in subsection 2 and section 490.124, subsection 3, a document accepted for filing is effective at the later of the following times:

a. At the time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document.

b. At the time specified in the document as its effective time on the date it is filed.

2. A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

89 Acts, ch 288, §6 SF 502  
NEW section

**490.124 Correcting filed documents.**

1. A domestic or foreign corporation may correct a document filed by the secretary of state if the document satisfies one or both of the following requirements:

a. Contains an incorrect statement.

b. Was defectively executed, attested, sealed, verified, or acknowledged.

2. A document is corrected by complying with both of the following:

a. By preparing articles of correction that satisfy all of the following requirements:

(1) Describe the document, including its filing date, or attach a copy of it to the articles.

(2) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective.

(3) Correct the incorrect statement or defective execution.

b. By delivering the articles to the secretary of state for filing.

3. Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

89 Acts, ch 288, §7 SF 502  
NEW section

**490.125 Filing duty of secretary of state.**

1. If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 490.120, the secretary of state shall file it.

2. The secretary of state files a document by stamping or otherwise endorsing "filed", together with the secretary's name and official title and the date and time of receipt, on both the document and the receipt for the filing fee. After filing a document, except the annual report required by section 490.1622, and except as provided in sections 490.503 and 490.1509, the secretary of state shall deliver the document, with the filing fee receipt, or acknowledgment of receipt if no fee is required, attached, to the domestic or foreign corporation or its representative.

3. If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative within ten days after the document was received by the secretary of state, together with a brief, written explanation of the reason for the refusal.

4. The secretary of state's duty to file documents under this section is ministerial. Filing or refusing to file a document does not:

a. Affect the validity or invalidity of the document in whole or part.

b. Relate to the correctness or incorrectness of information contained in the document.

c. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

89 Acts, ch 288, §8 SF 502  
NEW section

#### **490.126 Appeal from secretary of state's refusal to file document.**

1. If the secretary of state refuses to file a document delivered to the secretary's office for filing, the domestic or foreign corporation may appeal the refusal, within thirty days after the return of the document, to the district court for the county in which the corporation's principal office or, if none in this state, its registered office is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

2. The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

3. The court's final decision may be appealed as in other civil proceedings.

89 Acts, ch 288, §9 SF 502  
NEW section

#### **490.127 Evidentiary effect of copy of filed document.**

A certificate attached to a copy of a document filed by the secretary of state, bearing the secretary of state's signature, which may be in facsimile, and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

89 Acts, ch 288, §10 SF 502  
NEW section

#### **490.128 Certificate of existence.**

1. Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

2. A certificate of existence or authorization must set forth all of the following:

a. The domestic corporation's corporate name or the foreign corporation's corporate name used in this state.

b. That one of the following apply:

(1) If it is a domestic corporation, that it is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual.

(2) If it is a foreign corporation, that it is authorized to transact business in this state.

c. That all fees required by this chapter have been paid.

d. That its most recent annual report required by section 490.1622 has been filed by the secretary of state.

e. That articles of dissolution have not been filed.

f. Other facts of record in the office of the secretary of state that may be requested by the applicant.

3. Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

89 Acts, ch 288, §11 SF 502  
NEW section

#### **490.129 Penalty for signing false document.**

1. A person commits an offense if that person signs a document the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

2. An offense under this section is a serious misdemeanor punishable by a fine of not to exceed one thousand dollars.

89 Acts, ch 288, §12 SF 502  
NEW section

#### **490.130 Recording of documents with county recorder.**

A domestic corporation shall provide the secretary of state with a copy of each document, except an annual report which does not change the registered office or registered agent of the corporation, delivered by the corporation for filing with the secretary of state. A registered agent who delivers to the secretary of state for filing a statement pursuant to section 490.502, subsection 2, or files a statement pursuant to section 490.502, subsection 3, shall provide a copy of the statement to the secretary of state. A registered agent who delivers to the secretary of state for filing a statement pursuant to section 490.503, subsection 1, shall provide an additional copy pursuant to this section. If a registered agent delivers for filing with the secretary of state a statement changing the operation's business address from one county to another county or the corporation delivers for filing with the secretary of state a statement changing its registered office from one county to another county, two copies of the statement shall be provided to the secretary of state. The secretary of state shall stamp the copy or copies provided by the corporation or registered agent indicating receipt by the secretary of state and shall send the copy or copies to the county recorder. Upon receipt of the copy and upon receipt of the recording fees due the county recorder, the county recorder shall record and index the copy and return the copy to the corporation or registered agent who provided the copy. Notwithstanding section 331.602, subsection 1, original signatures and typed or printed names of signatories are not required on the copy to be recorded pursuant to this section. For purposes of this section, "*county recorder*" means the county recorder of the county in which the registered office of the corporation is located as shown on the records of the secretary of state, except that with respect to a change of registered office changing the location of the registered office from one county to another, "*county recorder*" means the county recorder for the county in which the registered office is located before the change and the county recorder for the county in which the registered office is located after the change.

89 Acts, ch 288, §13 SF 502  
NEW section

**490.131 through 490.134 Reserved.**

#### **PART C**

#### **490.135 Secretary of state—powers.**

The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this chapter.

89 Acts, ch 288, §14 SF 502  
NEW section

**490.136 through 490.139 Reserved.**

#### **PART D**

#### **490.140 Definitions.**

In this chapter, unless the context requires otherwise:

1. "*Articles of incorporation*" include amended and restated articles of incorporation and articles of merger.
2. "*Authorized shares*" means the shares of all classes a domestic or foreign corporation is authorized to issue.

3. "*Conspicuous*" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

4. "*Corporation*" or "*domestic corporation*" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to this chapter.

5. "*Deliver*" includes mail delivery.

6. "*Distribution*" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

7. "*Effective date of notice*" is defined in section 490.141.

8. "*Employee*" includes an officer but not a director. A director may accept duties that make the director also an employee.

9. "*Entity*" includes corporation and foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government.

10. "*Foreign corporation*" means a corporation for profit incorporated under a law other than the law of this state.

11. "*Governmental subdivision*" includes authority, city, county, district, township, and other political subdivision.

12. "*Includes*" denotes a partial definition.

13. "*Individual*" includes the estate of an incompetent, a ward, or a deceased individual.

14. "*Means*" denotes an exhaustive definition.

15. "*Notice*" is defined in section 490.141.

16. "*Person*" means a person as defined in section 4.1 and includes an individual and an entity.

17. "*Principal office*" means the office, in or out of this state, so designated in the annual report, where the principal executive offices of a domestic or foreign corporation are located.

18. "*Proceeding*" includes civil suit and criminal, administrative, and investigatory action.

19. "*Record date*" means the date established under division VI or VII on which a corporation determines the identity of its shareholders for purposes of this chapter.

20. "*Secretary*" means the corporate officer to whom the board of directors has delegated responsibility under section 490.840, subsection 3, for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

21. "*Share*" means the unit into which the proprietary interests in a corporation are divided.

22. "*Shareholder*" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

23. "*State*", when referring to a part of the United States, includes a state and commonwealth and their agencies and governmental subdivisions, and a territory and insular possession and their agencies and governmental subdivisions, of the United States.

24. "*Subscriber*" means a person who subscribes for shares in a corporation, whether before or after incorporation.

25. "*United States*" includes a district, authority, bureau, commission, department, and any other agency of the United States.

26. “*Voting group*” means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

89 Acts, ch 288, §15 SF 502  
NEW section

#### 490.141 Notice.

1. Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances.

2. Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.

3. Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective when mailed, if mailed postpaid and correctly addressed to the shareholder’s address shown in the corporation’s current record of shareholders.

4. Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

5. Except as provided in subsection 3, written notice, if in a comprehensible form, is effective at the earliest of the following:

a. When received.

b. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

c. On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

6. Oral notice is effective when communicated if communicated in a comprehensible manner.

7. If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, those requirements govern.

89 Acts, ch 288, §16 SF 502  
NEW section

#### 490.142 Number of shareholders.

1. For purposes of this chapter, any of the following identified as a shareholder in a corporation’s current record of shareholders constitutes one shareholder:

a. Three or fewer co-owners.

b. A corporation, partnership, trust, estate, or other entity.

c. The trustees, guardians of the property, custodians, or other fiduciaries of a single trust, estate, or account.

2. For purposes of this chapter, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

89 Acts, ch 288, §17 SF 502  
NEW section

DIVISION II  
INCORPORATION

**490.201 Incorporators.**

One or more persons may act as the incorporator or incorporators of a corporation by executing and delivering articles of incorporation to the secretary of state for filing.

89 Acts, ch 288, §18 SF 502  
NEW section

**490.202 Articles of incorporation.**

1. The articles of incorporation must set forth all of the following:
  - a. A corporate name for the corporation that satisfies the requirements of section 490.401.
  - b. The number of shares the corporation is authorized to issue.
  - c. The street address of the corporation's initial registered office and the name of its initial registered agent at that office.
  - d. The name and address of each incorporator.
2. The articles of incorporation may set forth any or all of the following:
  - a. The names and addresses of the individuals who are to serve as the initial directors.
  - b. Provisions not inconsistent with law regarding:
    - (1) The purpose or purposes for which the corporation is organized.
    - (2) Managing the business and regulating the affairs of the corporation.
    - (3) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders.
    - (4) A par value for authorized shares or classes of shares.
    - (5) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions.
  - c. Any provision that under this chapter is required or permitted to be set forth in the bylaws.
  - d. A provision consistent with section 490.832.
3. The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

89 Acts, ch 288, §19 SF 502  
NEW section

**490.203 Incorporation.**

1. Unless a delayed effective date or time is specified, the corporate existence begins when the articles of incorporation are filed.
2. The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

89 Acts, ch 288, §20 SF 502  
NEW section

**490.204 Liability for preincorporation transactions.**

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

89 Acts, ch 288, §21 SF 502  
NEW section

**490.205 Organization of corporation.**

1. After incorporation:
  - a. If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the

directors, to complete the organization of the corporation by appointing officers, adopting bylaws and carrying on any other business brought before the meeting.

b. If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to do one of the following:

(1) Elect directors and complete the organization of the corporation.

(2) Elect a board of directors who shall complete the organization of the corporation.

2. Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

3. An organizational meeting may be held in or out of this state.

89 Acts, ch 288, §22 SF 502  
NEW section

#### **490.206 Bylaws.**

1. The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

2. The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

89 Acts, ch 288, §23 SF 502  
NEW section

#### **490.207 Emergency bylaws.**

1. Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection 4. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

a. Procedures for calling a meeting of the board of directors.

b. Quorum requirements for the meeting.

c. Designation of additional or substitute directors.

2. All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

3. Corporate action taken in good faith in accordance with the emergency bylaws has both of the following effects:

a. The action binds the corporation.

b. The action shall not be used to impose liability on a corporate director, officer, employee, or agent.

4. An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

89 Acts, ch 288, §24 SF 502  
NEW section

### DIVISION III PURPOSES AND POWERS

#### **490.301 Purposes.**

1. A corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

2. A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.

89 Acts, ch 288, §25 SF 502  
NEW section

#### 490.302 General powers.

Unless its articles of incorporation provide otherwise, a corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power to do all of the following:

1. Sue and be sued, complain, and defend in its corporate name.
2. Have a corporate seal, which may be altered at will, and use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it.
3. Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation.
4. Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.
5. Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.
6. Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity.
7. Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income.
8. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.
9. Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.
10. Conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state.
11. Elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit.
12. Pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents.
13. Make donations for the public welfare or for charitable, scientific, or educational purposes.
14. Transact any lawful business that will aid governmental policy.
15. Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

89 Acts, ch 288, §26 SF 502  
NEW section

#### 490.303 Emergency powers.

1. In anticipation of or during an emergency as defined in subsection 4, the board of directors of a corporation may do either or both of the following:
  - a. Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent.
  - b. Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

2. During an emergency defined in subsection 4, unless emergency bylaws provide otherwise:

a. Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio.

b. One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

3. Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation shall both:

a. Bind the corporation.

b. Not be used to impose liability on a corporate director, officer, employee, or agent.

4. An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

89 Acts, ch 288, §27 SF 502  
NEW section

#### 490.304 Ultra vires.

1. Except as provided in subsection 2, the validity of corporate action is not challengeable on the ground that the corporation lacks or lacked power to act.

2. A corporation's power to act may be challenged in any of the following proceedings:

a. By a shareholder against the corporation to enjoin the act.

b. By the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation.

c. By the attorney general under section 490.1430.

3. In a shareholder's proceeding under subsection 2, paragraph "a", to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

89 Acts, ch 288, §28 SF 502  
NEW section

### DIVISION IV

#### NAMES

#### 490.401 Corporate name.

1. A corporate name:

a. Must contain the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", or words or abbreviations of like import in another language.

b. Shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 490.301 and its articles of incorporation.

2. Except as authorized by subsections 3 and 4, a corporate name must be distinguishable upon the records of the secretary of state from all of the following:

a. The corporate name of a corporation incorporated or authorized to transact business in this state.

b. A corporate name reserved or registered under section 490.402 or 490.403.

c. The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable.

d. The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

3. A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary's records from one or more of the names described in subsection 2. The secretary of state shall authorize use of the name applied for if one of the following conditions applies:

a. The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

b. The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

4. A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation meets one of the following conditions:

a. Has merged with the other corporation.

b. Has been formed by reorganization of the other corporation.

c. Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. This chapter does not control the use of fictitious names; however, if a corporation uses a fictitious name in this state it shall deliver to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

89 Acts, ch 288, §29 SF 502  
NEW section

#### **490.402 Reserved name.**

1. A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty day period.

2. The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

89 Acts, ch 288, §30 SF 502  
NEW section

#### **490.403 Registered name.**

1. A foreign corporation may register its corporate name, or its corporate name with any addition required by section 490.1506, if the name is distinguishable upon the records of the secretary of state from the corporate names that are not available under section 490.401, subsection 2, paragraph "b".

2. A foreign corporation registers its corporate name, or its corporate name with any addition required by section 490.1506, by delivering to the secretary of state for filing an application:

a. Setting forth its corporate name, or its corporate name with any addition required by section 490.1506, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged.

b. Accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.

3. The name is registered for the applicant's exclusive use upon the effective date of the application.

4. A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application which complies with the requirements of subsection 2 between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

5. A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this state. The first registration terminates when the domestic corporation is incorporated with that name or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

89 Acts, ch 288, §31 SF 502  
NEW section

#### DIVISION V

#### REGISTERED OFFICE AND AGENT—SERVICE

##### **490.501 Registered office and registered agent.**

Each corporation must continuously maintain in this state both of the following:

1. A registered office that may be the same as any of its places of business.
2. A registered agent, who may be any of the following:
  - a. An individual who resides in this state and whose business office is identical with the registered office.
  - b. A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office.
  - c. A foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

89 Acts, ch 288, §32 SF 502  
NEW section

##### **490.502 Change of registered office or registered agent.**

1. A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

- a. The name of the corporation.
- b. The street address of its current registered office.
- c. If the current registered office is to be changed, the street address of the new registered office.
- d. The name of its current registered agent.
- e. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.

f. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

2. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any corporation for which the person is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection 1 and recites that the corporation has been notified of the change.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the business address and the address of the registered agent by filing a statement as required in subsection 2 for each corporation, or a single statement for all corporations named in the

notice, except that it need be signed only by the registered agent or agents and need not be responsive to subsection 1, paragraph "e", and must recite that a copy of the statement has been mailed to each corporation named in the notice.

4. A corporation may also change its registered office or registered agent in its annual report as provided in section 490.1622.

89 Acts, ch 288, §33 SF 502  
NEW section

#### **490.503 Resignation of registered agent.**

1. A registered agent may resign the agent's agency appointment by signing and delivering to the secretary of state for filing the signed original and two exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

2. After filing the statement the secretary of state shall mail one copy to the registered office, if not discontinued, and the other copy to the corporation at its principal office.

3. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

89 Acts, ch 288, §34 SF 502  
NEW section

#### **490.504 Service on corporation.**

1. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

2. If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:

- a. The date the corporation receives the mail.
- b. The date shown on the return receipt, if signed on behalf of the corporation.
- c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

3. This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

89 Acts, ch 288, §35 SF 502  
NEW section

### DIVISION VI

#### SHARES AND SHAREHOLDERS' RIGHTS

##### PART A

#### **490.601 Authorized shares.**

1. The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section 490.602.

2. The articles of incorporation must authorize both of the following:

- a. One or more classes of shares that together have unlimited voting rights.
- b. One or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

3. The articles of incorporation may authorize one or more classes of shares that have any of the following qualities:

a. Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this chapter.

b. Are redeemable or convertible as specified in the articles of incorporation in any of the following ways:

(1) At the option of the corporation, the shareholders, or another person or upon the occurrence of a designated event.

(2) For cash, indebtedness, securities, or other property.

(3) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events.

c. Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative.

d. Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

4. The description of the designations, preferences, limitations, and relative rights of share classes in subsection 3 is not exhaustive.

89 Acts, ch 288, §36 SF 502  
NEW section

#### **490.602 Terms of class or series determined by board of directors.**

1. If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights, within the limits set forth in section 490.601, of either of the following:

a. Any class of shares before the issuance of any shares of that class.

b. One or more series within a class before the issuance of any shares of that series.

2. Each series of a class must be given a distinguishing designation.

3. All shares of a series must have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

4. Before issuing any shares of a class or series created under this section, the corporation must deliver to the secretary of state for filing articles of amendment, which are effective without shareholder action, that set forth all of the following:

a. The name of the corporation.

b. The text of the amendment determining the terms of the class or series of shares.

c. The date it was adopted.

d. A statement that the amendment was duly adopted by the board of directors.

89 Acts, ch 288, §37 SF 502  
NEW section

#### **490.603 Issued and outstanding shares.**

1. A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

2. The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection 3 and to section 490.640.

3. At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

89 Acts, ch 288, §38 SF 502  
NEW section

**490.604 Fractional shares.**

1. A corporation may:
  - a. Issue fractions of a share or pay in money the value of fractions of a share.
  - b. Arrange for disposition of fractional shares by the shareholders.
  - c. Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.
2. Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by section 490.625, subsection 2.
3. The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.
4. The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:
  - a. That the scrip will become void if not exchanged for full shares before a specified date.
  - b. That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scrip holders.

89 Acts, ch 288, §39 SF 502  
NEW section

**490.605 through 490.619 Reserved.**

## PART B

**490.620 Subscription for shares before incorporation.**

1. A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.
2. The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.
3. Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.
4. If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty days after the corporation sends written demand for payment to the subscriber.
5. A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to section 490.621.

89 Acts, ch 288, §40 SF 502  
NEW section

**490.621 Issuance of shares.**

1. The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.
2. The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.
3. Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is

adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

4. When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued for that consideration are fully paid and nonassessable.

5. The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

89 Acts, ch 288, §41 SF 502  
NEW section

#### **490.622 Liability of shareholders.**

1. A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued under section 490.621, or specified in the subscription agreement authorized under section 490.620.

2. Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation.

89 Acts, ch 288, §42 SF 502  
NEW section

#### **490.623 Share dividends.**

1. Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

2. Shares of one class or series shall not be issued as a share dividend in respect of shares of another class or series unless one or more of the following conditions are met:

- a. The articles of incorporation so authorize.
- b. A majority of the votes entitled to be cast by the class or series to be issued approve the issue.
- c. There are no outstanding shares of the class or series to be issued.

3. If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

89 Acts, ch 288, §43 SF 502  
NEW section

#### **490.624 Share options.**

A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

89 Acts, ch 288, §44 SF 502  
NEW section

#### **490.624A Poison pill defense authorized.**

The terms and conditions of stock rights or options issued by the corporation may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer, or receipt of such rights or options by a person, or group of persons, owning or offering to acquire a specified number or percentage of the outstanding common shares or other securities of the corporation, or a transferee

of the offeror, or that invalidate or void such stock rights or options held by an offeror or a transferee of the offeror.

89 Acts, ch 288, §45 SF 502  
NEW section

#### **490.625 Content of certificates.**

1. Shares may be, but need not be, represented by certificates. Unless this chapter or another section expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

2. At a minimum each share certificate must state on its face all of the following:

a. The name of the issuing corporation and that it is organized under the law of this state.

b. The name of the person to whom issued.

c. The number and class of shares and the designation of the series, if any, the certificate represents.

3. If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class, the variations in rights, preferences, and limitations determined for each series, and the authority of the board of directors to determine variations for future series must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

4. Each share certificate:

a. Must be signed either manually or in facsimile by two officers designated in the bylaws or by the board of directors.

b. May bear the corporate seal or its facsimile.

5. If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

89 Acts, ch 288, §46 SF 502  
NEW section

#### **490.626 Shares without certificates.**

1. Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

2. Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by section 490.625, subsections 2 and 3, and, if applicable, section 490.627.

89 Acts, ch 288, §47 SF 502  
NEW section

#### **490.627 Restriction on transfer of shares and other securities.**

1. The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

2. A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is

authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by section 490.626, subsection 2. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

3. A restriction on the transfer or registration of transfer of shares is authorized for any of the following purposes:

a. To maintain the corporation's status when it is dependent on the number or identity of its shareholders.

b. To preserve exemptions under federal or state securities law.

c. For any other reasonable purpose.

4. A restriction on the transfer or registration of transfer of shares may do any of the following:

a. Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares.

b. Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares.

c. Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable.

d. Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

5. For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

89 Acts, ch 288, §48 SF 502  
NEW section

#### **490.628 Expense of issue.**

A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

89 Acts, ch 288, §49 SF 502  
NEW section

#### **490.629 Reserved.**

### PART C

#### **490.630 Shareholders' preemptive rights.**

1. Unless section 490.1704 is applicable to the corporation, the shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

2. A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or words of similar import, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

a. The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

b. A shareholder may waive the shareholder's preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

c. There is no preemptive right with respect to:

(1) Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates.

(2) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates.

(3) Shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation.

(4) Shares sold otherwise than for money.

*d.* Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

*e.* Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

*f.* Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

3. For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

89 Acts, ch 288, §50 SF 502  
NEW section

#### **490.631 Corporation's acquisition of its own shares.**

1. A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.

2. If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

3. The board of directors may adopt articles of amendment under this section without shareholder action, and deliver them to the secretary of state for filing. The articles must set forth all of the following:

*a.* The name of the corporation.

*b.* The reduction in the number of authorized shares, itemized by class and series.

*c.* The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

89 Acts, ch 288, §51 SF 502  
NEW section

#### **490.632 through 490.639 Reserved.**

#### PART D

#### **490.640 Distribution to shareholders.**

1. A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection 3.

2. If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a repurchase or reacquisition of shares, it is the date the board of directors authorizes the distribution.

3. No distribution may be made if, after giving it effect either of the following would result:

a. The corporation would not be able to pay its debts as they become due in the usual course of business.

b. The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

4. The board of directors may base a determination that a distribution is not prohibited under subsection 3 either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

5. The effect of a distribution under subsection 3 is measured:

a. In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(1) The date money or other property is transferred or debt incurred by the corporation.

(2) The date the shareholder ceases to be a shareholder with respect to the acquired shares.

b. In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed.

c. In all other cases, as of:

(1) The date the distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization.

(2) The date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

6. A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

89 Acts, ch 288, §52 SF 502  
NEW section

#### DIVISION VII

#### MEETINGS—NOTICE—VOTING

#### PART A

#### 490.701 Annual meeting.

1. A corporation shall hold annually, at a time stated in or fixed in accordance with the bylaws, a meeting of shareholders.

2. Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

3. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

89 Acts, ch 288, §53 SF 502  
NEW section

#### 490.702 Special meeting.

1. A corporation shall hold a special meeting of shareholders either:

a. On call of its board of directors or the person or persons authorized to call a special meeting by the articles of incorporation or bylaws.

b. If the holders of at least ten percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and

deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

2. If not otherwise fixed under section 490.703 or 490.707, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

3. Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

4. Only business with the purpose or purposes described in the meeting notice required by section 490.705, subsection 3, may be conducted at a special shareholders' meeting.

89 Acts, ch 288, §54 SF 502  
NEW section

#### **490.703 Court-ordered meeting.**

1. The district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may summarily order a meeting to be held either:

a. On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting.

b. On application of a shareholder who signed a demand for a special meeting valid under section 490.702 if either:

(1) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary.

(2) The special meeting was not held in accordance with the notice.

2. The court may fix the time and place of the meeting, ascertain the shares entitled to participate in the meeting, specify a record date for ascertaining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

89 Acts, ch 288, §55 SF 502  
NEW section

#### **490.704 Action without meeting.**

1. Unless otherwise provided in the articles of incorporation, any action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting or vote, and, except as provided in subsection 5, without prior notice, if one or more written consents describing the action taken are signed by the holders of outstanding shares having not less than ninety percent of the votes entitled to be cast at a meeting at which all shares entitled to vote on the action were present and voted, and are delivered to the corporation for inclusion in the minutes or filing with the corporate records.

2. A written consent shall bear the date of signature of each shareholder who signs the consent and no written consent is effective to take the corporate action referred to in the consent unless, within sixty days of the earliest dated consent delivered in the manner required by this section to the corporation, written consents signed by a sufficient number of holders to take action are delivered to the corporation.

3. If not otherwise fixed under section 490.703 or 490.707, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection 1.

4. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

5. If this chapter requires that notice of proposed action be given to shareholders not entitled to vote and the action is to be taken by consent of the voting shareholders, the corporation must give all shareholders written notice of the proposed action at least ten days before the action is taken. The notice must contain or be accompanied by the same material that, under this chapter, would have been required to be sent to shareholders not entitled to vote in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

6. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those shareholders who have not consented in writing. If the taking of that corporate action requires the giving of notice under section 490.1320, subsection 2, the notice of the action shall set forth the matters described in section 490.1322.

89 Acts, ch 288, §56 SF 502  
NEW section

#### **490.705 Notice of meeting.**

1. A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

2. Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

3. Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

4. If not otherwise fixed under section 490.703 or 490.707, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.

5. Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 490.707, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

89 Acts, ch 288, §57 SF 502  
NEW section

#### **490.706 Waiver of notice.**

1. A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

2. A shareholder's attendance at a meeting:

a. Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting or promptly upon the shareholder's arrival objects to holding the meeting or transacting business at the meeting.

b. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

89 Acts, ch 288, §58 SF 502  
NEW section

#### **490.707 Record date.**

1. The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

2. A record date fixed under this section shall not be more than seventy days before the meeting or action requiring a determination of shareholders.

3. A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

4. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

89 Acts, ch 288, §59 SF 502  
NEW section

#### **490.708 through 490.719 Reserved.**

#### PART B

#### **490.720 Shareholders' list for meeting.**

1. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder.

2. The shareholders' list must be available for inspection by any shareholder beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, or a shareholder's agent or attorney, is entitled on written demand to inspect and, subject to the requirements of section 490.1602, subsection 3, to copy the list, during regular business hours and at the person's expense, during the period it is available for inspection.

3. The corporation shall make the shareholders' list available at the meeting, and any shareholder, or a shareholder's agent or attorney, is entitled to inspect the list at any time during the meeting or any adjournment.

4. If the corporation refuses to allow a shareholder, or a shareholder's agent or attorney, to inspect the shareholders' list before or at the meeting, or copy the list as permitted by subsection 3, the district court of the county where a corporation's principal office or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

5. Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

89 Acts, ch 288, §60 SF 502  
NEW section

**490.721 Voting entitlement of shares.**

1. Except as provided in subsections 2 and 3 or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

2. Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

3. Subsection 2 does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

4. Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

89 Acts, ch 288, §61 SF 502  
NEW section

**490.722 Proxies.**

1. A shareholder may vote the shareholder's shares in person or by proxy.

2. A shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form, either personally or by the shareholder's attorney-in-fact.

3. An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a longer period is expressly provided in the appointment form.

4. An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include, but are not limited to, the appointment of:

a. A pledgee.

b. A person who purchased or agreed to purchase the shares.

c. A creditor of the corporation who extended it credit under terms requiring the appointment.

d. An employee of the corporation whose employment contract requires the appointment.

e. A party to a voting agreement created under section 490.731.

5. The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

6. An appointment made irrevocable under subsection 4 is revoked when the interest with which it is coupled is extinguished.

7. A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

8. Subject to section 490.724 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled

to accept the proxy's vote or other action as that of the shareholder making the appointment.

89 Acts, ch 288, §62 SF 502  
NEW section

#### **490.723 Shares held by nominees.**

1. A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

2. The procedure may set forth:

- a. The types of nominees to which it applies.
- b. The rights or privileges that the corporation recognizes in a beneficial owner.
- c. The manner in which the procedure is selected by the nominee.
- d. The information that must be provided when the procedure is selected.
- e. The period for which selection of the procedure is effective.
- f. Other aspects of the rights and duties created.

89 Acts, ch 288, §63 SF 502  
NEW section

#### **490.724 Corporation's acceptance of votes.**

1. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

2. If the name signed on a voted consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

- a. The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity.
- b. The name signed purports to be that of an administrator, executor, guardian of the property, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.
- c. The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.
- d. The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment.

e. Two or more persons are the shareholder as co-tenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

3. The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

4. The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

5. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

89 Acts, ch 288, §64 SF 502  
NEW section

#### **490.725 Quorum and voting requirements for voting groups.**

1. Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provides otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

2. Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

3. If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter require a greater number of affirmative votes.

4. An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection 2 or 3 is governed by section 490.727.

5. The election of directors is governed by section 490.728.

89 Acts, ch 288, §65 SF 502  
NEW section

#### **490.726 Action by single or multiple groups.**

1. If the articles of incorporation or this chapter provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in section 490.725.

2. If the articles of incorporation or this chapter provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 490.725. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

89 Acts, ch 288, §66 SF 502  
NEW section

#### **490.727 Greater quorum or voting requirements.**

1. The articles of incorporation may provide for a greater quorum or voting requirement for shareholders or voting groups of shareholders than is provided for by this chapter.

2. An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

89 Acts, ch 288, §67 SF 502  
NEW section

#### **490.728 Voting for directors—cumulative voting.**

1. Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

2. Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

3. A statement included in the articles of incorporation that “[all][a designated voting group of] shareholders are entitled to cumulate their votes for directors”, or words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

89 Acts, ch 288, §68 SF 502  
NEW section

**490.729** Reserved.

PART C

**490.730 Voting trusts.**

1. One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation’s principal office.

2. A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee’s name. A voting trust is valid for not more than ten years after its effective date unless extended under subsection 3.

3. All or some of the parties to a voting trust may extend it for additional terms of not more than ten years each by signing an extension agreement and obtaining the voting trustee’s written consent to the extension. An extension is valid for ten years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation’s principal office. An extension agreement binds only those parties signing it.

89 Acts, ch 288, §69 SF 502  
NEW section

**490.731 Voting agreements.**

1. Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to section 490.730.

2. A voting agreement created under this section is specifically enforceable.

89 Acts, ch 288, §70 SF 502  
NEW section

**490.732 through 490.739** Reserved.

PART D

**490.740 Procedure in derivative proceedings.**

1. A person shall not commence a proceeding in the right of a domestic or foreign corporation unless that person was a shareholder of the corporation when the transaction complained of occurred or unless that person became a shareholder through transfer by operation of law from one who was a shareholder at that time.

2. A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made, if any, to obtain action by the board of directors and either that the demand was refused or ignored or why the complainant did not make the demand. Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in

the demand or complaint, the court may stay any proceeding until the investigation is completed.

3. A proceeding commenced under this section shall not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given the shareholders affected.

4. On termination of the proceeding the court may require the plaintiff to pay any defendant's reasonable expenses including attorney fees incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

5. For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

89 Acts, ch 288, §71 SF 502  
NEW section

DIVISION VIII  
DIRECTORS AND OFFICERS  
PART A

**490.801 Requirement for and duties of board of directors.**

1. Except as provided in subsection 3, each corporation must have a board of directors.

2. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation.

3. A corporation having fifty or fewer shareholders may dispense with or limit the authority of a board of directors by describing in its articles of incorporation who will perform some or all of the duties of a board of directors.

89 Acts, ch 288, §72 SF 502  
NEW section

**490.802 Qualifications of directors.**

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

89 Acts, ch 288, §73 SF 502  
NEW section

**490.803 Number and election of directors.**

1. A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

2. If a board of directors has power to fix or change the number of directors, the board may increase or decrease by thirty percent or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than thirty percent the number of directors last approved by the shareholders.

3. The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed-range to a variable-range size board or vice versa.

4. Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 490.806.

89 Acts, ch 288, §74 SF 502  
NEW section

#### **490.804 Election of directors by certain classes of shareholders.**

If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. Each class, or classes, of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

89 Acts, ch 288, §75 SF 502  
NEW section

#### **490.805 Terms of directors generally.**

1. The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

2. The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under section 490.806.

3. A decrease in the number of directors does not shorten an incumbent director's term.

4. The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

5. Despite the expiration of a director's term, the director continues to serve until a successor for that director is elected and qualifies or until there is a decrease in the number of directors.

89 Acts, ch 288, §76 SF 502  
NEW section

#### **490.806 Staggered terms for directors.**

The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

89 Acts, ch 288, §77 SF 502  
NEW section

#### **490.807 Resignation of directors.**

1. A director may resign at any time by delivering written notice to the board of directors, its chairperson, or to the corporation.

2. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

89 Acts, ch 288, §78 SF 502  
NEW section

#### **490.808 Removal of directors by shareholders.**

1. The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

2. If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

3. If cumulative voting is authorized, a director shall not be removed if the number of votes sufficient to elect that director under cumulative voting is voted against the director's removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove that director exceeds the number of votes cast not to remove the director.

4. A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and after notice stating that the purpose, or one of the purposes, of the meeting is removal of the director. A director shall not be removed pursuant to written consents under section 490.704 unless written consents are obtained from the holders of all the outstanding shares of the corporation.

89 Acts, ch 288, §79 SF 502  
NEW section

#### **490.809 Removal of directors by judicial proceeding.**

1. The district court of the county where a corporation's principal office or, if none in this state, its registered office is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least twenty percent of the outstanding shares of any class if the court finds that both of the following apply:

a. The director engaged in fraudulent or dishonest conduct with respect to the corporation.

b. Removal is in the best interest of the corporation.

2. The court that removes a director may bar the director from reelection for a period prescribed by the court.

3. If shareholders commence a proceeding under subsection 1, they shall make the corporation a party defendant.

89 Acts, ch 288, §80 SF 502  
NEW section

#### **490.810 Vacancy on board.**

1. Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors, the vacancy may be filled in any of the following manners:

a. The shareholders may fill the vacancy.

b. The board of directors may fill the vacancy.

c. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

2. If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

3. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under section 490.807, subsection 2 or otherwise, may be filled before the vacancy occurs but the new director shall not take office until the vacancy occurs.

89 Acts, ch 288, §81 SF 502  
NEW section

#### **490.811 Compensation of directors.**

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

89 Acts, ch 288, §82 SF 502  
NEW section

**490.812 through 490.819** Reserved.

PART B

**490.820 Meetings.**

1. The board of directors may hold regular or special meetings in or out of this state.

2. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

89 Acts, ch 288, §83 SF 502  
NEW section

**490.821 Action without meeting.**

1. Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

2. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

3. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

89 Acts, ch 288, §84 SF 502  
NEW section

**490.822 Notice of meeting.**

1. Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

2. Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

89 Acts, ch 288, §85 SF 502  
NEW section

**490.823 Waiver of notice.**

1. A director may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection 2, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

2. A director's attendance at or participation in a meeting waives any required notice to that director of the meeting unless the director at the beginning of the meeting or promptly upon the director's arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

89 Acts, ch 288, §86 SF 502  
NEW section

**490.824 Quorum and voting.**

1. Unless the articles of incorporation or bylaws require a different number, a quorum of a board of directors consists of either:

a. A majority of the fixed number of directors if the corporation has a fixed board size.

b. A majority of the number of directors prescribed, or, if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

2. The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection 1.

3. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

4. A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless one or more of the following occurs:

a. The director objects at the beginning of the meeting or promptly upon the director's arrival to holding it or transacting business at the meeting.

b. The director's dissent or abstention from the action taken is entered in the minutes of the meeting.

c. The director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting.

The right of dissent or abstention is not available to a director who votes in favor of the action taken.

89 Acts, ch 288, §87 SF 502  
NEW section

#### **490.825 Committees.**

1. Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee may have two or more members, who serve at the pleasure of the board of directors.

2. The creation of a committee and appointment of members to it must be approved by the greater of either:

a. A majority of all the directors in office when the action is taken.

b. The number of directors required by the articles of incorporation or bylaws to take action under section 490.824.

3. Sections 490.820 through 490.824, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

4. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under section 490.801.

5. A committee shall not, however:

a. Authorize distributions.

b. Approve or propose to shareholders action that this chapter requires be approved by shareholders.

c. Fill vacancies on the board of directors or on any of its committees.

d. Amend articles of incorporation pursuant to section 490.1002.

e. Adopt, amend, or repeal bylaws.

f. Approve a plan of merger not requiring shareholder approval.

g. Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors.

h. Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a

committee or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

6. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 490.830.

89 Acts, ch 288, §88 SF 502  
NEW section

**490.826 through 490.829** Reserved.

PART C

**490.830 General standards for directors.**

1. A director shall discharge that director's duties as a director, including the director's duties as a member of a committee in conformity with all of the following:

- a. In good faith.
- b. With the care an ordinarily prudent person in a like position would exercise under similar circumstances.
- c. In a manner the director reasonably believes to be in the best interests of the corporation.

2. In discharging the director's duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

- a. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented.
- b. Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence.

c. A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

3. A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection 2 unwarranted.

4. A director is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance with this section, or if, and to the extent that, liability for any such action or failure to act has been limited by the articles of incorporation pursuant to section 490.832.

89 Acts, ch 288, §89 SF 502  
NEW section

**490.831 Director conflict of interest.**

1. A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

a. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction.

b. The material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction.

c. The transaction was fair to the corporation.

2. For purposes of this section, a director of the corporation has an indirect interest in a transaction if either:

a. Another entity in which the director has a material financial interest or in which the director is a general partner is a party to the transaction.

b. Another entity of which the director is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

3. For purposes of subsection 1, paragraph "a", a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors or on the committee, who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection 1, paragraph "a", if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

4. For purposes of subsection 1, paragraph "b", a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in subsection 2, paragraph "a", shall not be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection 1, paragraph "b". The vote of those shares, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

89 Acts, ch 288, §90 SF 502  
NEW section

#### **490.832 Indemnification of directors.**

The articles of incorporation may contain a provision eliminating or limiting 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 shareholders, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, for a transaction from which the director derives an improper personal benefit, or under section 490.833. 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.

89 Acts, ch 288, §91 SF 502  
NEW section

#### **490.833 Liability for unlawful distribution.**

1. Unless the director complies with the applicable standards of conduct described in section 490.830, a director who votes for or assents to a distribution made in violation of this chapter or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter or the articles of incorporation.

2. A director held liable for an unlawful distribution under subsection 1 is entitled to contribution from both of the following:

a. Every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in section 490.830.

b. Each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of this chapter or the articles of incorporation.

89 Acts, ch 288, §92 SF 502  
NEW section

**490.834 through 490.839** Reserved.

PART D

**490.840 Required officers.**

1. A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

2. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

3. The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

4. The same individual may simultaneously hold more than one office in a corporation.

89 Acts, ch 288, §93 SF 502  
NEW section

**490.841 Duties of officers.**

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

89 Acts, ch 288, §94 SF 502  
NEW section

**490.842 Standards of conduct for officers.**

1. An officer with discretionary authority shall discharge the officer's duties under that authority in conformity with all of the following:

- a. In good faith.
- b. With the care an ordinarily prudent person in a like position would exercise under similar circumstances.
- c. In a manner the officer reasonably believes to be in the best interests of the corporation.

2. In discharging the person's duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by either:

- a. One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented.
- b. Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

3. An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection 2 unwarranted.

4. An officer is not liable for any action taken as an officer, or any failure to take any action, if the officer performed the duties of the officer's office in compliance with this section.

89 Acts, ch 288, §95 SF 502  
NEW section

**490.843 Resignation and removal of officers.**

1. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the

corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

2. A board of directors may remove any officer at any time with or without cause.

89 Acts, ch 288, §96 SF 502  
NEW section

#### 490.844 Contract rights of officers.

1. The appointment of an officer does not itself create contract rights.

2. An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

89 Acts, ch 288, §97 SF 502  
NEW section

#### 490.845 through 490.849 Reserved.

### PART E

#### 490.850 Definitions.

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

1. "*Corporation*" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

2. "*Director*" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, that director to the plan or to participants in or beneficiaries of the plan. "*Director*" includes, unless the context requires otherwise, the estate or personal representative of a director.

3. "*Expenses*" include counsel fees.

4. "*Liability*" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

5. "*Official capacity*" means:

a. When used with respect to a director, the office of director in a corporation.

b. When used with respect to an individual other than a director, as contemplated in section 490.856, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation.

"*Official capacity*" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

6. "*Party*" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

7. "*Proceeding*" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

89 Acts, ch 288, §98 SF 502  
NEW section

#### **490.851 Authority to indemnify.**

1. Except as provided in subsection 4, a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if all of the following apply:

- a. The individual acted in good faith.
- b. The individual reasonably believed:

(1) In the case of conduct in the individual's official capacity with the corporation, that the individual's conduct was in the corporation's best interests.

(2) In all other cases, that the individual's conduct was at least not opposed to the corporation's best interests.

c. In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

2. A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection 1, paragraph "b", subparagraph (2).

3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

4. A corporation shall not indemnify a director under this section in either of the following circumstances:

a. In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation.

b. In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

5. Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

89 Acts, ch 288, §99 SF 502  
NEW section

#### **490.852 Mandatory indemnification.**

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding.

89 Acts, ch 288, §100 SF 502  
NEW section

#### **490.853 Advance for expenses.**

1. A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if any of the following apply:

a. The director furnishes the corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in section 490.851.

b. The director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet that standard of conduct.

c. A determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

2. The undertaking required by subsection 1, paragraph "b", must 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.

3. Determinations and authorizations of payments under this section shall be made in the manner specified in section 490.855.

89 Acts, ch 288, §101 SF 502  
NEW section

#### **490.854 Court-ordered indemnification.**

Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification if it determines either of the following:

1. The director is entitled to mandatory indemnification under section 490.852, in which case the court shall also order the corporation to pay the directors reasonable expenses incurred to obtain court-ordered indemnification.

2. The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 490.851 or was adjudged liable as described in section 490.851, subsection 4, but if the director was adjudged so liable the director's indemnification is limited to reasonable expenses incurred.

89 Acts, ch 288, §102 SF 502  
NEW section

#### **490.855 Determination and authorization of indemnification.**

1. A corporation shall not indemnify a director under section 490.851 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 section 490.851.

2. The determination shall be made by any of the following:

a. By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding.

b. If a quorum cannot be obtained under paragraph "a", by majority vote of a committee duly designated by the board of directors, in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding.

c. By special legal counsel:

(1) Selected by the board of directors or its committee in the manner prescribed in paragraph "a" or "b".

(2) If a quorum of the board of directors cannot be obtained under paragraph "a" and a committee cannot be designated under paragraph "b", selected by majority vote of the full board of directors, in which selection directors who are parties may participate.

d. By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding shall not be voted on the determination.

3. Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection 2, paragraph "c" to select counsel.

89 Acts, ch 288, §103 SF 502  
NEW section

### **490.856 Indemnification of officers, employees, and agents.**

Unless a corporation's articles of incorporation provide otherwise all of the following apply:

1. An officer of the corporation who is not a director is entitled to mandatory indemnification under section 490.852, and is entitled to apply for court-ordered indemnification under section 490.854, in each case to the same extent as a director.

2. The corporation may indemnify and advance expenses under this part to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director.

3. A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with law, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

89 Acts, ch 288, §104 SF 502  
NEW section

### **490.857 Insurance.**

A corporation may purchase and maintain insurance on behalf of an individual 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, employee benefit plan, or other enterprise, against liability asserted against or incurred by that individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify that individual against the same liability under section 490.851 or 490.852.

89 Acts, ch 288, §105 SF 502  
NEW section

### **490.858 Application of part E.**

Except as limited in section 490.851, subsection 4, paragraph "a" and subsection 5 with respect to proceedings by or in the right of the corporation, the indemnification and advancement of expenses provided by, or granted pursuant to, sections 490.850 through 490.857 are not exclusive of any other rights to which persons 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, such provisions, agreements, votes, or other actions shall not provide indemnification for a breach of a director's duty of loyalty to the corporation or its shareholders, 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 person seeking indemnification derives an improper personal benefit, or for liability under section 490.833.

89 Acts, ch 288, §106 SF 502  
NEW section

## DIVISION IX

### SPECIAL CLASSES

### **490.901 Foreign-trade zone corporation.**

A corporation may be organized under the laws of this state for the purpose of establishing, operating, and maintaining a foreign-trade zone as defined in 19 U.S.C. §81(a). A corporation organized for the purposes set forth in this section has all powers necessary or convenient for applying for a grant of authority to

establish, operate, and maintain a foreign-trade zone under 19 U.S.C. §81(a), et seq., and regulations promulgated under that law, and for establishing, operating, and maintaining a foreign-trade zone pursuant to that grant of authority.

89 Acts, ch 288, §107 SF 502  
NEW section

#### **490.902 Foreign insurance companies becoming domestic.**

The secretary of state, upon a corporation complying with this section and upon the filing of articles of incorporation and upon receipt of the fees as provided in this chapter, shall issue a certificate of incorporation as of the date of the corporation's original incorporation in its state of original incorporation. The certificate of incorporation shall state on its face that it is issued in accordance with this section. The secretary of state shall forward the articles as provided in this chapter to the county recorder where the principal place of business of the corporation is to be located. The secretary of state shall then notify the appropriate officer of the state or country of the corporation's last domicile that the corporation is now a domestic corporation domiciled in this state. This section applies to life insurance companies, and to insurance companies doing business under chapter 515.

89 Acts, ch 288, §108 SF 502  
NEW section

### DIVISION X

#### AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

##### PART A

#### **490.1001 Amendment of articles of incorporation—authority to amend.**

1. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

2. A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

89 Acts, ch 288, §109 SF 502  
NEW section

#### **490.1002 Amendment by board of directors.**

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action for any of the following purposes:

1. To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law.
2. To delete the names and addresses of the initial directors.
3. To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state.
4. To change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding.
5. To change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name.

6. To make any other change expressly permitted by this chapter to be made without shareholder action.

89 Acts, ch 288, §110 SF 502  
NEW section

#### **490.1003 Amendment by board of directors and shareholders.**

1. A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

2. For the amendment to be adopted both of the following must occur:

a. The board of directors must recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment.

b. The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection 5.

3. The board of directors may condition its submission of the proposed amendment on any basis.

4. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 490.705. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

5. Unless this chapter, the articles of incorporation, or the board of directors acting pursuant to subsection 3 requires a greater vote or a vote by voting groups, the amendment to be adopted must be approved by both of the following:

a. A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights.

b. The votes required by sections 490.725 and 490.726 by every other voting group entitled to vote on the amendment.

89 Acts, ch 288, §111 SF 502  
NEW section

#### **490.1004 Voting on amendments by voting groups.**

1. The holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this chapter, on a proposed amendment if the amendment would do any of the following:

a. Increase or decrease the aggregate number of authorized shares of the class.

b. Effect an exchange or reclassification of all or part of the shares of the class into shares of another class.

c. Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of that class.

d. Change the designation, rights, preferences, or limitations of all or part of the shares of the class.

e. Change the shares of all or part of the class into a different number of shares of the same class.

f. Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to, the shares of the class.

g. Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class.

h. Limit or deny an existing preemptive right of all or part of the shares of the class.

i. Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

2. If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection 1, the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

3. If a proposed amendment that entitles two or more series of shares to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series so affected must vote together as a single voting group on the proposed amendment.

4. A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

89 Acts, ch 288, §112 SF 502  
NEW section

#### **490.1005 Amendment before issuance of shares.**

If a corporation has not yet issued shares, its incorporators or board of directors may adopt one or more amendments to the corporation's articles of incorporation.

89 Acts, ch 288, §113 SF 502  
NEW section

#### **490.1006 Articles of amendment.**

A corporation amending its articles of incorporation shall deliver to the secretary of state for filing articles of amendment setting forth:

1. The name of the corporation.
2. The text of each amendment adopted.
3. If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself.
4. The date of each amendment's adoption.
5. If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required.
6. If an amendment was approved by the shareholders:
  - a. The designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting.
  - b. Either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

89 Acts, ch 288, §114 SF 502  
NEW section

#### **490.1007 Restated articles of incorporation.**

1. A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action.
2. The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it must be adopted as provided in section 490.1003.
3. If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 490.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

4. A corporation restating its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

a. Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement.

b. If the restatement contains an amendment to the articles requiring shareholder approval, the information required by section 490.1006.

5. Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

6. The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection 4.

89 Acts, ch 288, §115 SF 502  
NEW section

#### **490.1008 Amendment pursuant to reorganization.**

1. A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by section 490.202.

2. The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth all of the following:

a. The name of the corporation.

b. The text of each amendment approved by the court.

c. The date of the court's order or decree approving the articles of amendment.

d. The title of the reorganization proceeding in which the order or decree was entered.

e. A statement that the court had jurisdiction of the proceeding under federal statute.

3. Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.

4. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

89 Acts, ch 288, §116 SF 502  
NEW section

#### **490.1009 Effect of amendment.**

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

89 Acts, ch 288, §117 SF 502  
NEW section

**490.1010 through 490.1019 Reserved.**

#### **PART B**

#### **490.1020 Amendment of bylaws by board of directors or shareholders.**

1. A corporation's board of directors may amend or repeal the corporation's bylaws unless either of the following apply:

a. The articles of incorporation or this chapter reserve this power exclusively to the shareholders in whole or part.

b. The shareholders in amending or repealing a particular bylaw provide expressly that the board of directors shall not amend or repeal that bylaw.

2. A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors.

89 Acts, ch 288, §118 SF 502  
NEW section

#### **490.1021 Bylaw increasing quorum or voting requirement for shareholders.**

1. If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders or voting groups of shareholders than is required by this chapter. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

2. A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection 1 shall not be adopted, amended, or repealed by the board of directors.

89 Acts, ch 288, §119 SF 502  
NEW section

#### **490.1022 Bylaw increasing quorum or voting requirement for directors.**

1. A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

- a. If originally adopted by the shareholders, only by the shareholders.
- b. If originally adopted by the board of directors, either by the shareholders or by the board of directors.

2. A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

3. Action by the board of directors under subsection 1, paragraph "b" to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

89 Acts, ch 288, §120 SF 502  
NEW section

### DIVISION XI

#### MERGER AND SHARE EXCHANGE

#### **490.1101 Merger.**

1. One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders, if required by section 490.1103, approve a plan of merger.

2. The plan of merger must set forth all of the following:

- a. The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge.
- b. The terms and conditions of the merger.
- c. The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part.

3. The plan of merger may set forth:

- a. Restated articles or amendments to the articles of incorporation of the surviving corporation.
- b. Other provisions relating to the merger.

89 Acts, ch 288, §121 SF 502  
NEW section

#### **490.1102 Share exchange.**

1. A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by section 490.1103, approve the exchange.
  2. The plan of exchange must set forth all of the following:
    - a. The name of the corporation whose shares will be acquired and the name of the acquiring corporation.
    - b. The terms and conditions of the exchange.
    - c. The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.
  3. The plan of exchange may set forth other provisions relating to the exchange.
  4. This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

89 Acts, ch 288, §122 SF 502  
NEW section

#### **490.1103 Action on plan.**

1. After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in subsection 7, or share exchange for approval by its shareholders.
2. For a plan of merger or share exchange to be approved both of the following must occur:
  - a. The board of directors must recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan.
  - b. The shareholders entitled to vote must approve the plan.
3. The board of directors may condition its submission of the proposed merger or share exchange on any basis.
4. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 490.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.
5. Unless this chapter, the articles of incorporation, or the board of directors acting pursuant to subsection 3 require a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.
6. Separate voting by voting groups is required:
  - a. On a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under section 490.1004.

b. On a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

7. Action by the shareholders of the surviving corporation on a plan of merger is not required if all of the following apply:

a. The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in section 490.1002, from its articles before the merger.

b. Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after.

c. The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent the total number of voting shares of the surviving corporation outstanding immediately before the merger.

d. The number of participating shares outstanding immediately after the merger plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent the total number of participating shares outstanding immediately before the merger.

8. As used in subsection 7:

a. "*Participating shares*" means shares that entitle their holders to participate without limitation in distributions.

b. "*Voting shares*" means shares that entitle their holders to vote unconditionally in elections of directors.

9. After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

89 Acts, ch 288, §123 SF 502  
NEW section

#### **490.1104 Merger of subsidiary.**

1. A parent corporation owning at least ninety percent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary.

2. The board of directors of the parent shall adopt a plan of merger that sets forth both of the following:

a. The names of the parent and subsidiary.

b. The manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or part.

3. The parent corporation shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

4. The parent corporation shall not deliver articles of merger to the secretary of state for filing until at least thirty days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

5. Articles of merger under this section shall not contain amendments to the articles of incorporation of the parent corporation except for amendments enumerated in section 490.1002.

89 Acts, ch 288, §124 SF 502  
NEW section

#### **490.1105 Articles of merger or share exchange.**

1. After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the secretary of state for filing articles of merger or share exchange setting forth all of the following:

- a. The plan of merger or share exchange.
- b. If shareholder approval was not required, a statement to that effect.
- c. If approval of the shareholders of one or more corporations party to the merger or share exchange was required, both of the following:

(1) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation.

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

2. A merger or share exchange takes effect upon the effective date of the articles of merger or share exchange.

89 Acts, ch 288, §125 SF 502  
NEW section

#### **490.1106 Effect of merger or share exchange.**

1. When a merger takes effect all of the following apply:

a. Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases.

b. The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment.

c. The surviving corporation has all liabilities of each corporation party to the merger.

d. A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased.

e. The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger.

f. The shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under division XIII.

2. When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under division XIII.

89 Acts, ch 288, §126 SF 502  
NEW section

**490.1107 Merger or share exchange with foreign corporation.**

1. One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

a. In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger.

b. In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated.

c. The foreign corporation complies with section 490.1105 if it is the surviving corporation of the merger or acquiring corporation of the share exchange.

d. Each domestic corporation complies with the applicable provisions of sections 490.1101 through 490.1104 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with section 490.1105.

2. Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

a. To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange.

b. To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under division XIII.

3. This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

89 Acts, ch 288, §127 SF 502  
NEW section

**490.1108 Consideration of community interests in consideration of acquisition proposals.**

1. A director, in determining what is in the best interest of the corporation when considering a tender offer or proposal of acquisition, merger, consolidation, or similar proposal, may consider any or all of the following community interest factors, in addition to consideration of the effects of any action on shareholders:

a. The effects of the action on the corporation's employees, suppliers, creditors, and customers.

b. The effects of the action on the communities in which the corporation operates.

c. The long-term as well as short-term interests of the corporation and its shareholders, including the possibility that these interests may be best served by the continued independence of the corporation.

2. If on the basis of the community interest factors described in paragraph 1, the board of directors determines that a proposal or offer to acquire or merge the corporation is not in the best interests of the corporation, it may reject the proposal or offer. If the board of directors determines to reject any such proposal or offer, the board of directors has no obligation to facilitate, to remove any barriers to, or to refrain from impeding, the proposal or offer. Consideration of any or all of the community interest factors is not a violation of the business judgment rule or of any duty of the director to the shareholders, or a group of shareholders, even if the director reasonably determines that a community interest factor or factors

outweigh the financial or other benefits to the corporation or a shareholder or group of shareholders.

89 Acts, ch 288, §128 SF 502  
NEW section

DIVISION XII  
SALE OF ASSETS

**490.1201 Sale of assets in regular course of business and mortgage of assets.**

1. A corporation may, on the terms and conditions and for the consideration determined by the board of directors do any of the following:

a. Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business.

b. Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business.

c. Transfer any or all of its property to a corporation all the shares of which are owned by the transferring corporation whether or not in the usual course of business.

2. Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection 1 is not required.

89 Acts, ch 288, §129 SF 502  
NEW section

**490.1202 Sale of assets other than in regular course of business.**

1. A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

2. For a transaction to be authorized both of the following must occur:

a. The board of directors must recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction.

b. The shareholders entitled to vote must approve the transaction.

3. The board of directors may condition its submission of the proposed transaction on any basis.

4. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 490.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

5. Unless the articles of incorporation or the board of directors acting pursuant to subsection 3 require a greater vote or a vote by voting groups, the transaction to be authorized must be approved by a majority of all the votes entitled to be cast on the transaction.

6. After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned subject to any contractual rights without further shareholder action.

7. A transaction that constitutes a distribution is governed by section 490.640 and not by this section.

89 Acts, ch 288, §130 SF 502  
NEW section

DIVISION XIII

DISSENTERS' RIGHTS

PART A

**490.1301 Definitions for division XIII.**

In this division:

1. "*Corporation*" means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

2. "*Dissenter*" means a shareholder who is entitled to dissent from corporate action under section 490.1302 and who exercises that right when and in the manner required by sections 490.1320 through 490.1328.

3. "*Fair value*", with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

4. "*Interest*" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

5. "*Record shareholder*" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

6. "*Beneficial shareholder*" means the person who is a beneficial owner of shares held by a nominee as the record shareholder.

7. "*Shareholder*" means the record shareholder or the beneficial shareholder.

89 Acts, ch 288, §131 SF 502  
NEW section

**490.1302 Shareholders' right to dissent.**

1. A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

a. Consummation of a plan of merger to which the corporation is a party if either of the following apply:

(1) Shareholder approval is required for the merger by section 490.1103 or the articles of incorporation and the shareholder is entitled to vote on the merger.

(2) The corporation is a subsidiary that is merged with its parent under section 490.1104.

b. Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan.

c. Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale.

d. An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it does any or all of the following:

- (1) Alters or abolishes a preferential right of the shares.
- (2) Creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares.
- (3) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities.
- (4) Excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights.
- (5) Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under section 490.604.
- (6) Extends, for the first time after being governed by this chapter, the period of duration of a corporation organized under chapter 491 or 496A and existing for a period of years on the day preceding the date the corporation is first governed by this chapter.

e. Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

2. A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter is not entitled to challenge the corporate action creating the shareholder's entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

89 Acts, ch 288, §132 SF 502  
NEW section

#### **490.1303 Dissent by nominees and beneficial owners.**

1. A record shareholder may assert dissenters' rights as to fewer than all the shares registered in that shareholder's name only if the shareholder dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf the shareholder asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which the shareholder dissents and the shareholder's other shares were registered in the names of different shareholders.

2. A beneficial shareholder may assert dissenters' rights as to shares held on the shareholder's behalf only if the shareholder does both of the following:

a. Submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights.

b. Does so with respect to all shares of which the shareholder is the beneficial shareholder or over which that beneficial shareholder has power to direct the vote.

89 Acts, ch 288, §133 SF 502  
NEW section

#### **490.1304 through 490.1319 Reserved.**

#### **PART B**

#### **490.1320 Notice of dissenters' rights.**

1. If proposed corporate action creating dissenters' rights under section 490.1302 is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this part and be accompanied by a copy of this part.

2. If corporate action creating dissenters' rights under section 490.1302 is taken without a vote of shareholders, the corporation shall notify in writing all

shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in section 490.1322.

89 Acts, ch 288, §134 SF 502  
NEW section

#### **490.1321 Notice of intent to demand payment.**

1. If proposed corporate action creating dissenters' rights under section 490.1302 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights must do all of the following:

a. Deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed action is effectuated.

b. Not vote the dissenting shareholder's shares in favor of the proposed action.

2. A shareholder who does not satisfy the requirements of subsection 1, is not entitled to payment for the shareholder's shares under this part.

89 Acts, ch 288, §135 SF 502  
NEW section

#### **490.1322 Dissenters' notice.**

1. If proposed corporate action creating dissenters' rights under section 490.1302 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of section 490.1321.

2. The dissenters' notice must be sent no later than ten days after the corporate action by the shareholders was taken and must do all of the following:

a. State where the payment demand must be sent and where and when certificates for certificated shares must be deposited.

b. Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received.

c. Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date.

d. Set a date by which the corporation must receive the payment demand, which date shall not be fewer than thirty nor more than sixty days after the date the subsection 1 notice is delivered.

e. Be accompanied by a copy of this division.

89 Acts, ch 288, §136 SF 502  
NEW section

#### **490.1323 Duty to demand payment.**

1. A shareholder sent a dissenters' notice described in section 490.1322 must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to section 490.1322, subsection 2, paragraph "c", and deposit the shareholder's certificates in accordance with the terms of the notice.

2. The shareholder who demands payment and deposits the shareholder's shares under subsection 1 retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

3. A shareholder who does not demand payment or deposit the shareholder's share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for the shareholder's shares under this division.

89 Acts, ch 288, §137 SF 502  
NEW section

**490.1324 Share restrictions.**

1. The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under section 490.1326.

2. The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

89 Acts, ch 288, §138 SF 502  
NEW section

**490.1325 Payment.**

1. Except as provided in section 490.1327, as soon as the proposed corporate action is taken, or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with section 490.1323 the amount the corporation estimates to be the fair value of the dissenter's shares, plus accrued interest.

2. The payment must be accompanied by all of the following:

a. The corporation's balance sheet as of the end of a fiscal year ending not more than sixteen months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any.

b. A statement of the corporation's estimate of the fair value of the shares.

c. An explanation of how the interest was calculated.

d. A statement of the dissenter's right to demand payment under section 490.1328.

e. A copy of this division.

89 Acts, ch 288, §139 SF 502  
NEW section

**490.1326 Failure to take action.**

1. If the corporation does not take the proposed action within sixty days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

2. If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it must send a new dissenters' notice under section 490.1322 and repeat the payment demand procedure.

89 Acts, ch 288, §140 SF 502  
NEW section

**490.1327 After-acquired shares.**

1. A corporation may elect to withhold payment required by section 490.1325 from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

2. To the extent the corporation elects to withhold payment under subsection 1, after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of the dissenter's demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under section 490.1328.

89 Acts, ch 288, §141 SF 502  
NEW section

**490.1328 Procedure if shareholder dissatisfied with payment or offer.**

1. A dissenter may notify the corporation in writing of the dissenter's own estimate of the fair value of the dissenter's shares and amount of interest due, and demand payment of the dissenter's estimate, less any payment under section

490.1325, or reject the corporation's offer under section 490.1327 and demand payment of the fair value of the dissenter's shares and interest due, if any of the following apply:

a. The dissenter believes that the amount paid under section 490.1325 or offered under section 490.1327 is less than the fair value of the dissenter's shares or that the interest due is incorrectly calculated.

b. The corporation fails to make payment under section 490.1325 within sixty days after the date set for demanding payment.

c. The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within sixty days after the date set for demanding payment.

2. A dissenter waives the dissenter's right to demand payment under this section unless the dissenter notifies the corporation of the dissenter's demand in writing under subsection 1 within thirty days after the corporation made or offered payment for the dissenter's shares.

89 Acts, ch 288, §142 SF 502  
NEW section

**490.1329** Reserved.

PART C

**490.1330 Court action.**

1. If a demand for payment under section 490.1328 remains unsettled, the corporation shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

2. The corporation shall commence the proceeding in the district court of the county where a corporation's principal office or, if none in this state, its registered office is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

3. The corporation shall make all dissenters, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

4. The jurisdiction of the court in which the proceeding is commenced under subsection 2 is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

5. Each dissenter made a party to the proceeding is entitled to judgment for either of the following:

a. The amount, if any, by which the court finds the fair value of the dissenter's shares, plus interest, exceeds the amount paid by the corporation.

b. The fair value, plus accrued interest, of the dissenter's after-acquired shares for which the corporation elected to withhold payment under section 490.1327.

89 Acts, ch 288, §143 SF 502  
NEW section

**490.1331 Court costs and counsel fees.**

1. The court in an appraisal proceeding commenced under section 490.1330 shall determine all costs of the proceeding, including the reasonable compensa-

tion and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under section 490.1328.

2. The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable, for either of the following:

a. Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of sections 490.1320 through 490.1328.

b. Against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

3. If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

89 Acts, ch 288, §144 SF 502  
NEW section

DIVISION XIV

DISSOLUTION

PART A

**490.1401 Dissolution by incorporators or initial directors.**

A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth all of the following:

1. The name of the corporation.
2. The date of its incorporation.
3. Either of the following:
  - a. That none of the corporation's shares has been issued.
  - b. That the corporation has not commenced business.
4. That no debt of the corporation remains unpaid.
5. That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued.
6. That a majority of the incorporators or initial directors authorized the dissolution.

89 Acts, ch 288, §145 SF 502  
NEW section

**490.1402 Dissolution by board of directors and shareholders.**

1. A corporation's board of directors may propose dissolution for submission to the shareholders.
2. For a proposal to dissolve to be adopted both of the following must apply:
  - a. The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders.
  - b. The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection 5.

3. The board of directors may condition its submission of the proposal for dissolution on any basis.

4. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 490.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

5. Unless the articles of incorporation or the board of directors acting pursuant to subsection 3 requires a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by a majority of all the votes entitled to be cast on that proposal.

89 Acts, ch 288, §146 SF 502  
NEW section

#### **490.1403 Articles of dissolution.**

1. At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth all of the following:

a. The name of the corporation.

b. The date dissolution was authorized.

c. If dissolution was approved by the shareholders, both of the following:

(1) The number of votes entitled to be cast on the proposal to dissolve.

(2) Either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

d. If voting by voting groups was required, the information required by paragraph "c" must be separately provided for each voting group entitled to vote separately on the plan to dissolve.

2. A corporation is dissolved upon the effective date of its articles of dissolution.

89 Acts, ch 288, §147 SF 502  
NEW section

#### **490.1404 Revocation of dissolution.**

1. A corporation may revoke its dissolution within one hundred twenty days of its effective date.

2. Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

3. After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth all of the following:

a. The name of the corporation.

b. The effective date of the dissolution that was revoked.

c. The date that the revocation of dissolution was authorized.

d. If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect.

e. If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization.

f. If shareholder action was required to revoke the dissolution, the information required by section 490.1403, subsection 1, paragraph "c" or "d".

4. Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

5. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution as if the dissolution had never occurred.

89 Acts, ch 288, §148 SF 502  
NEW section

#### **490.1405 Effect of dissolution.**

1. A dissolved corporation continues its corporate existence but shall not carry on any business except that appropriate to wind up and liquidate its business and affairs, including any of the following:

- a. Collecting its assets.
- b. Disposing of its properties that will not be distributed in kind to its shareholders.
- c. Discharging or making provision for discharging its liabilities.
- d. Distributing its remaining property among its shareholders according to their interests.
- e. Doing every other act necessary to wind up and liquidate its business and affairs.

2. Dissolution of a corporation does not do any of the following:

- a. Transfer title to the corporation's property.
- b. Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records.
- c. Subject its directors or officers to standards of conduct different from those prescribed in division VIII.
- d. Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws.
- e. Prevent commencement of a proceeding by or against the corporation in its corporate name.
- f. Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution.
- g. Terminate the authority of the registered agent of the corporation.

89 Acts, ch 288, §149 SF 502  
NEW section

#### **490.1406 Known claims against dissolved corporation.**

1. A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

2. The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must do all of the following:

- a. Describe information that must be included in a claim.
- b. Provide a mailing address where a claim may be sent.
- c. State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim.
- d. State that the claim will be barred if not received by the deadline.

3. A claim against the dissolved corporation is barred if either of the following occur:

- a. A claimant who was given written notice under subsection 2 does not deliver the claim to the dissolved corporation by the deadline.
- b. A claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

4. For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

89 Acts, ch 288, §150 SF 502  
NEW section

#### **490.1407 Unknown claims against dissolved corporation.**

1. A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

2. The notice must meet all of the following requirements:

a. Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office or, if none in this state, its registered office is or was last located.

b. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.

c. State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

3. If the dissolved corporation publishes a newspaper notice in accordance with subsection 2, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

a. A claimant who did not receive written notice under section 490.1406.

b. A claimant whose claim was timely sent to the dissolved corporation but not acted on.

c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

4. A claim may be enforced under this section in either of the following ways:

a. Against the dissolved corporation, to the extent of its undistributed assets.

b. If the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section shall not exceed the total amount of assets distributed to the shareholder in liquidation.

89 Acts, ch 288, §151 SF 502  
NEW section

**490.1408 through 490.1419 Reserved.**

#### **PART B**

#### **490.1420 Grounds for administrative dissolution.**

The secretary of state may commence a proceeding under section 490.1421 to administratively dissolve a corporation if any of the following apply:

1. The corporation does not pay within sixty days after they are due any franchise taxes or penalties imposed by this chapter or other law.

2. The corporation has not delivered an annual report to the secretary of state in a form that meets the requirements of section 490.1622, within sixty days after it is due.

3. The corporation is without a registered agent or registered office in this state for sixty days or more.

4. The corporation does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

5. The corporation's period of duration stated in its articles of incorporation expires.

89 Acts, ch 288, §152 SF 502  
NEW section

**490.1421 Procedure for and effect of administrative dissolution.**

1. If the secretary of state determines that one or more grounds exist under section 490.1420 for dissolving a corporation, the secretary of state shall serve the corporation with written notice of the secretary of state's determination under section 490.504.

2. If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected under section 490.504, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under section 490.504.

3. A corporation administratively dissolved continues its corporate existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs under section 490.1405 and notify claimants under sections 490.1406 and 490.1407.

4. The administrative dissolution of a corporation does not terminate the authority of its registered agent.

89 Acts, ch 288, §153 SF 502  
NEW section

**490.1422 Reinstatement following administrative dissolution.**

1. A corporation administratively dissolved under section 490.1421 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must meet all of the following requirements:

a. Recite the name of the corporation at its date of dissolution and the effective date of its administrative dissolution.

b. State that the ground or grounds for dissolution either did not exist or have been eliminated.

c. State a corporate name that satisfies the requirements of section 490.401.

d. Contain a certificate from the department of revenue and finance reciting that all taxes owed by the corporation have been paid.

2. If the secretary of state determines that the application contains the information required by subsection 1 and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 490.504. If the corporate name in subsection 1, paragraph "c" is different than the corporate name in subsection 1, paragraph "a", the certificate of reinstatement shall constitute an amendment to the articles of incorporation insofar as it pertains to the corporate name.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

89 Acts, ch 288, §154 SF 502  
NEW section

**490.1423 Appeal from denial of reinstatement.**

1. If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, the secretary of state shall serve the

corporation under section 490.504 with a written notice that explains the reason or reasons for denial.

2. The corporation may appeal the denial of reinstatement to the district court within thirty days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

3. The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

4. The court's final decision may be appealed as in other civil proceedings.

89 Acts, ch 288, §155 SF 502  
NEW section

#### **490.1424 through 490.1429 Reserved.**

#### **PART C**

#### **490.1430 Grounds for judicial dissolution.**

The district court may dissolve a corporation in any of the following ways:

1. A proceeding by the attorney general, if it is established that either of the following apply:

a. The corporation obtained its articles of incorporation through fraud.

b. The corporation has continued to exceed or abuse the authority conferred upon it by law.

2. A proceeding by a shareholder if it is established that any of the following conditions exist:

a. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and either irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock.

b. The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent.

c. The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired.

d. The corporate assets are being misapplied or wasted.

3. A proceeding by a creditor if it is established that either of the following apply:

a. The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent.

b. The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

4. A proceeding by the corporation to have its voluntary dissolution continued under court supervision.

89 Acts, ch 288, §156 SF 502  
NEW section

#### **490.1431 Procedure for judicial dissolution.**

1. Venue for a proceeding by the attorney general to dissolve a corporation lies in Polk county. Venue for a proceeding brought by any other party named in section 490.1430 lies in the county where a corporation's principal office or, if none in this state, its registered office is or was last located.

2. It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

3. A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court

directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

89 Acts, ch 288, §157 SF 502  
NEW section

#### **490.1432 Receivership or custodianship.**

1. A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

2. The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

3. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

a. The receiver may do either or both of the following:

(1) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court.

(2) Sue and defend in the receiver's own name as receiver of the corporation in all courts of this state.

b. The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

4. The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

5. The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

89 Acts, ch 288, §158 SF 502  
NEW section

#### **490.1433 Decree of dissolution.**

1. If after a hearing the court determines that one or more grounds for judicial dissolution described in section 490.1430 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

2. After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with section 490.1405 and the notification of claimants in accordance with sections 490.1406 and 490.1407.

89 Acts, ch 288, §159 SF 502  
NEW section

**490.1434 through 490.1439 Reserved.**

PART D

#### **490.1440 Deposit with state treasurer.**

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not

competent to receive them shall be reduced to cash and deposited with the treasurer of state or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the treasurer of state or other appropriate state official shall pay the creditor, claimant, or shareholder or that person's representative that amount.

89 Acts, ch 288, §160 SF 502  
NEW section

DIVISION XV  
FOREIGN CORPORATIONS

PART A

**490.1501 Authority to transact business required.**

1. A foreign corporation shall not transact business in this state until it obtains a certificate of authority from the secretary of state.

2. The following activities, among others, do not constitute transacting business within the meaning of subsection 1:

- a. Maintaining, defending, or settling any proceeding.
  - b. Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs.
  - c. Maintaining bank accounts.
  - d. Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities.
  - e. Selling through independent contractors.
  - f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.
  - g. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
  - h. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.
  - i. Owning, without more, real or personal property.
  - j. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature.
  - k. Transacting business in interstate commerce.
3. The list of activities in subsection 2 is not exhaustive.

89 Acts, ch 288, §161 SF 502  
NEW section

**490.1502 Consequences of transacting business without authority.**

1. A foreign corporation transacting business in this state without a certificate of authority shall not maintain a proceeding in any court in this state until it obtains a certificate of authority.

2. The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business shall not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

3. A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

4. A foreign corporation is liable for a civil penalty of not to exceed a total of one thousand dollars if it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection.

5. Notwithstanding subsections 1 and 2, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

89 Acts, ch 288, §162 SF 502  
NEW section

#### **490.1503 Application for certificate of authority.**

1. A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth all of the following:

- a. The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 490.1506.
- b. The name of the state or country under whose law it is incorporated.
- c. Its date of incorporation and period of duration.
- d. The street address of its principal office.
- e. The address of its registered office in this state and the name of its registered agent at that office.
- f. The names and usual business addresses of its current directors and officers.

2. The foreign corporation shall deliver with the completed application a certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated.

89 Acts, ch 288, §163 SF 502  
NEW section

#### **490.1504 Amended certificate of authority.**

1. A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes any of the following:

- a. Its corporate name.
  - b. The period of its duration.
  - c. The state or country of its incorporation.
2. The requirements of section 490.1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

89 Acts, ch 288, §164 SF 502  
NEW section

#### **490.1505 Effect of certificate of authority.**

1. A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

2. A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided in this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

3. This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

89 Acts, ch 288, §165 SF 502  
NEW section

#### **490.1506 Corporate name of foreign corporation.**

1. If the corporate name of a foreign corporation does not satisfy the requirements of section 490.401, the foreign corporation, to obtain or maintain a

certificate of authority to transact business in this state, may do either of the following:

a. Add the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", to its corporate name for use in this state.

b. Use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

2. Except as authorized by subsections 3 and 4, the corporate name, including a fictitious name, of a foreign corporation must be distinguishable upon the records of the secretary of state from all of the following:

a. The corporate name of a corporation incorporated or authorized to transact business in this state.

b. A corporate name reserved or registered under section 490.402 or 490.403.

c. The fictitious name of another foreign corporation authorized to transact business in this state.

d. The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

3. A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation incorporated or authorized to transact business in this state that is not distinguishable upon the secretary of state's records from the name applied for. The secretary of state shall authorize use of the name applied for if either of the following apply:

a. The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

b. The applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

4. A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation has done any of the following:

a. Merged with the other corporation.

b. Been formed by reorganization of the other corporation.

c. Acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 490.401, it shall not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 490.401 and obtains an amended certificate of authority under section 490.1504.

89 Acts, ch 288, §166 SF 502  
NEW section

#### **490.1507 Registered office and registered agent of foreign corporation.**

A foreign corporation authorized to transact business in this state must continuously maintain in this state both of the following:

1. A registered office that may be the same as any of its places of business.

2. A registered agent, who may be any of the following:

a. An individual who resides in this state and whose business office is identical with the registered office.

b. A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office.

c. A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

89 Acts, ch 288, §167 SF 502  
NEW section

**490.1508 Change of registered office or registered agent of foreign corporation.**

1. A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

- a. Its name.
- b. The street address of its current registered office.
- c. If the current registered office is to be changed, the street address of its new registered office.
- d. The name of its current registered agent.
- e. If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.

f. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

2. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection 1 and recites that the corporation has been notified of the change.

3. A corporation may also change its registered office or registered agent in its annual report as provided in section 490.1622.

89 Acts, ch 288, §168 SF 502  
NEW section

**490.1509 Resignation of registered agent of foreign corporation.**

1. The registered agent of a foreign corporation may resign the agency appointment by signing and delivering to the secretary of state for filing the original and two exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

2. After filing the statement, the secretary of state shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The secretary of state shall mail the other copy of the foreign corporation to its principal office address shown in its most recent annual report.

3. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

89 Acts, ch 288, §169 SF 502  
NEW section

**490.1510 Service on foreign corporation.**

1. The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

2. A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most

recent annual report if the foreign corporation meets any of the following conditions:

- a. Has no registered agent or its registered agent cannot with reasonable diligence be served.
  - b. Has withdrawn from transacting business in this state under section 490.1520.
  - c. Has had its certificate of authority revoked under section 490.1531.
3. Service is perfected under subsection 2 at the earliest of:
- a. The date the foreign corporation receives the mail.
  - b. The date shown on the return receipt, if signed on behalf of the foreign corporation.
  - c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.
4. A foreign corporation may also be served in any other manner permitted by law.

89 Acts, ch 288, §170 SF 502  
NEW section

**490.1511 through 490.1519** Reserved.

PART B

**490.1520 Withdrawal of foreign corporation.**

1. A foreign corporation authorized to transact business in this state shall not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.
2. A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth all of the following:
  - a. The name of the foreign corporation and the name of the state or country under whose law it is incorporated.
  - b. That it is not transacting business in this state and that it surrenders its authority to transact business in this state.
  - c. That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state.
  - d. A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under paragraph "c".
  - e. A commitment to notify the secretary of state in the future of any change in its mailing address.
3. After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection 2.

89 Acts, ch 288, §171 SF 502  
NEW section

**490.1521 through 490.1529** Reserved.

PART C

**490.1530 Grounds for revocation.**

The secretary of state may commence a proceeding under section 490.1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

1. The foreign corporation does not deliver its annual report to the secretary of state within sixty days after it is due.

2. The foreign corporation does not pay within sixty days after they are due any franchise taxes or penalties imposed by this chapter or other laws.

3. The foreign corporation is without a registered agent or registered office in this state for sixty days or more.

4. The foreign corporation does not inform the secretary of state under section 490.1508 or 490.1509 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance.

5. An incorporator, director, officer, or agent of the foreign corporation signed a document that person knew was false in any material respect with intent that the document be delivered to the secretary of state for filing.

6. The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

89 Acts, ch 288, §172 SF 502  
NEW section

#### **490.1531 Procedure for and effect of revocation.**

1. If the secretary of state determines that one or more grounds exist under section 490.1530 for revocation of a certificate of authority, the secretary of state shall serve the foreign corporation with written notice of the secretary's determination under section 490.1510.

2. If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected under section 490.1510, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under section 490.1510.

3. The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

4. The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none is on file, in its application for a certificate of authority.

5. Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

89 Acts, ch 288, §173 SF 502  
NEW section

#### **490.1532 Appeal from revocation.**

1. A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the district court within thirty days after service of the certificate of revocation is perfected under section 490.1510. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

2. The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

3. The court's final decision may be appealed as in other civil proceedings.

89 Acts, ch 288, §174 SF 502  
NEW section

DIVISION XVI  
RECORDS AND REPORTS  
PART A

**490.1601 Corporate records.**

1. A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

2. A corporation shall maintain appropriate accounting records.

3. A corporation or its agent shall maintain a record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and class of shares held by each.

4. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

5. A corporation shall keep a copy of the following records:

a. Its articles or restated articles of incorporation and all amendments to them currently in effect.

b. Its bylaws or restated bylaws and all amendments to them currently in effect.

c. Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding.

d. The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years.

e. All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under section 490.1620.

f. A list of the names and business addresses of its current directors and officers.

g. Its most recent annual report delivered to the secretary of state under section 490.1622.

89 Acts, ch 288, §175 SF 502  
NEW section

**490.1602 Inspection of records by shareholders.**

1. A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in section 490.1601, subsection 5, if the shareholder gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

2. A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection 3 and gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy any of the following:

a. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection 1 of this section.

b. Accounting records of the corporation.

c. The record of shareholders.

3. A shareholder may inspect and copy the records described in subsection 2 only if:

a. The shareholder's demand is made in good faith and for a proper purpose.

b. The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect.

c. The records are directly connected with the shareholder's purpose.

4. The right of inspection granted by this section shall not be abolished or limited by a corporation's articles of incorporation or bylaws.

5. This section does not affect either of the following:

a. The right of a shareholder to inspect records under section 490.720 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant.

b. The power of a court, independently of this chapter, to compel the production of corporate records for examination.

89 Acts, ch 288, §176 SF 502  
NEW section

#### **490.1603 Scope of inspection right.**

1. A shareholder's agent or attorney has the same inspection and copying rights as the shareholder the agent or attorney represents.

2. The right to copy records under section 490.1602 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other technological means.

3. The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge shall not exceed the estimated cost of production or reproduction of the records.

4. The corporation may comply with a shareholder's demand to inspect the record of shareholders under section 490.1602, subsection 2, paragraph "c" by providing the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

89 Acts, ch 288, §177 SF 502  
NEW section

#### **490.1604 Court-ordered inspection.**

1. If a corporation does not allow a shareholder who complies with section 490.1602, subsection 1, to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation's principal office or, if none in this state, its registered office is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

2. If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other records, the shareholder who complies with section 490.1602, subsections 2 and 3 may apply to the district court in the county where the corporation's principal office or, if none in this state, its registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

3. If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable

counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

4. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

89 Acts, ch 288, §178 SF 502  
NEW section

#### **490.1605 through 490.1619 Reserved.**

#### **PART B**

#### **490.1620 Financial statements for shareholders.**

A corporation shall prepare annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and an income statement for that year. Upon written request from a shareholder, a corporation, at its expense, shall furnish to that shareholder the financial statements requested. If the annual financial statements are reported upon by a public accountant, that report must accompany them.

89 Acts, ch 288, §179 SF 502  
NEW section

#### **490.1621 Other reports to shareholders.**

1. If a corporation indemnifies or advances expenses to a director under sections 490.851 through 490.854 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

2. If a corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued, and the consideration received by the corporation, with or before the notice of the next shareholders' meeting.

89 Acts, ch 288, §180 SF 502  
NEW section

#### **490.1622 Annual report for secretary of state.**

1. Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing an annual report that sets forth all of the following:

a. The name of the corporation and the state or country under whose law it is incorporated.

b. The address of its registered office and the name of its registered agent at that office in this state, together with the consent of any new registered agent.

c. The address of its principal office.

d. The names and business addresses of its directors and principal officers.

e. The total number of authorized shares, itemized by class and series, if any, within each class.

f. The total number of issued and outstanding shares, itemized by class and series, if any, within each class.

g. A statement of the amount of agricultural land in this state owned by the corporation.

h. A statement that the corporation is or is not a family farm corporation as defined in section 172C.1.

2. Information in the annual report must be current as of the first day of January of the year in which the report is due. The annual report shall be

executed on behalf of the corporation and signed as provided in section 490.120 or by any other person authorized by the board of directors of the corporation.

3. The first annual report shall be delivered to the secretary of state between January 1 and April 1 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 1 of the following calendar years.

4. If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within thirty days after the effective date of notice, it is deemed to be timely filed.

5. The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the annual report, provided that the form contains the information required in section 490.502 or 490.1508. If the secretary of state determines that an annual report does not contain the information required by this section but otherwise meets the requirements of section 490.502 or 490.1508 for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent, effective as provided in section 490.123, before returning the annual report to the corporation as provided in this section. A statement of change of registered office or agent pursuant to this subsection shall be executed by a person authorized to execute the annual report.

89 Acts, ch 288, §181 SF 502  
NEW section

#### DIVISION XVII

#### TRANSITION PROVISIONS

#### **490.1701 Application to existing corporations.**

1. Except as provided in this subsection or chapter 504 or 504A, this chapter does not apply to or affect entities subject to chapter 504 or 504A. Such entities continue to be governed by all laws of this state applicable to them before December 31, 1989, as those laws are amended. This chapter does not derogate or limit the powers to which such entities are entitled.

2. Unless otherwise provided, this chapter does not apply to an entity subject to chapter 174, 176, 497, 498, 499, 499A, 524, 533, or 534 or a corporation organized on the mutual plan under chapter 491, or a telephone company organized as a corporation under chapter 491 qualifying pursuant to an internal revenue service letter ruling under I.R.C. §501(c)(12) as a nonprofit corporation entitled to distribute profits in a manner similar to a chapter 499 corporation, unless such entity voluntarily elects to adopt the provisions of this chapter and complies with the procedure prescribed by subsection 3 of this section.

3. The procedure for the voluntary election referred to in subsection 2 is as follows:

a. A resolution reciting that the corporation voluntarily adopts this chapter and designating the address of its initial registered office and the name of its registered agent or agents at that office and, if the name of the corporation is not in compliance with the requirements of this chapter, amending the articles of incorporation of the corporation to change the name of the corporation to one complying with the requirements of this chapter, shall be adopted by the board of directors and shareholders by the procedure prescribed by this chapter for the amendment of articles of incorporation.

b. Upon adoption of the required resolution or resolutions, an instrument shall be executed by the corporation by its president or a vice president and by its

secretary or an assistant secretary and verified by one of the officers signing the instrument, which shall set forth all of the following:

(1) The name of the corporation.

(2) Each such resolution adopted by the corporation and the date of adoption of each resolution.

(3) The address of its registered office and the name of its registered agent.

c. The instrument shall be delivered to the secretary of state for filing and recording in the secretary of state's office, and shall be filed and recorded in the office of the county recorder. The corporation shall at the time it files the instrument with the secretary of state deliver also to the secretary of state for filing in the secretary of state's office any annual report which is then due.

If the county of the initial registered office as stated in the instrument is one which is other than the county where the principal place of business of the corporation, as designated in its articles of incorporation, was located, the secretary of state shall forward also to the county recorder of the county in which the principal place of business of the corporation was located a copy of the instrument and the secretary of state shall forward to the recorder of the county in which the initial registered office of the corporation is located, in addition to the original of the instrument, a copy of the articles of incorporation of the corporation together with all amendments to them as then on file in the secretary of state's office.

d. Upon the filing of the instrument by a corporation all of the following apply:

(1) All of the provisions of this chapter apply to the corporation.

(2) The secretary of state shall issue a certificate as to the filing of the instrument and deliver the certificate to the corporation or its representative.

(3) The secretary of state shall not file the instrument with respect to a corporation unless at the time of filing the corporation is validly existing and in good standing in that office under the chapter under which it is incorporated. The corporation shall be considered validly existing and in good standing for the purpose of this chapter for a period of three months following the expiration date of the corporation, provided all annual reports due have been filed and all fees due in connection with the annual reports have been paid.

e. The provisions of this chapter becoming applicable to a corporation voluntarily electing to be governed by this chapter do not affect any right accrued or established, or any liability or penalty incurred, under the chapter under which it is incorporated prior to the filing by the secretary of state in the secretary of state's office of the instrument manifesting the election by the corporation to adopt the provisions of this chapter as provided in this subsection.

4. Except as specifically provided in this chapter, this chapter applies to all domestic corporations in existence on December 31, 1989, that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

5. A corporation subject to this chapter which does not have a registered office or registered agent or both designated on the records of the secretary of state is subject to all of the following provisions:

a. The office of the corporation set forth in its first annual report filed under this chapter shall be deemed its registered office until December 31, 1990, or until it files a designation of registered office with the secretary of state, whichever is earlier.

b. The person signing the first annual report of the corporation filed under this chapter shall be deemed the registered agent until December 31, 1990, or a statement designating a registered agent has been filed with the secretary of state, whichever is earlier.

c. Section 490.502 does not apply to the corporation until December 31, 1990, or until the corporation files a designation of registered office and registered agent at that office with the secretary of state, whichever is earlier.

6. A corporation subject to this chapter is not subject to chapter 491, 492, 493, 494, 495, or 496.

89 Acts, ch 288, §182 SF 502  
NEW section

#### **490.1702 Application to qualified foreign corporations.**

A foreign corporation authorized to transact business in this state on December 31, 1989, is subject to this chapter but is not required to obtain a new certificate of authority to transact business under this chapter.

89 Acts, ch 288, §183 SF 502  
NEW section

#### **490.1703 Savings provisions.**

1. Except as provided in subsection 2, the repeal of a statute by this chapter\* does not affect:

- a. The operation of the statute or any action taken under it before its repeal.
- b. Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal.
- c. Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal.
- d. Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

2. If a penalty or punishment imposed for violation of a statute repealed by 1989 Iowa Acts, chapter 288, is reduced by 1989 Iowa Acts, chapter 288, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

89 Acts, ch 288, §184 SF 502

\*1989 Iowa Acts, chapter 288, probably intended; corrective legislation is pending

NEW section

#### **490.1704 Preemptive rights for existing corporations.**

Notwithstanding any other provision of this chapter, a corporation which was incorporated under, or which elected to be governed by, chapter 496A prior to December 31, 1989, shall be governed by the following until December 31, 1992:

Except to the extent limited or denied by this section or by the articles of incorporation, shareholders have a preemptive right to acquire unissued shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares.

Unless otherwise provided in the articles of incorporation:

1. No preemptive right exists:
  - a. To acquire any shares issued to directors, officers, or employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or when authorized by and consistent with a plan approved by such a vote of shareholders.
  - b. To acquire any shares sold otherwise than for cash.
  - c. To acquire treasury shares of the corporation.
2. Holders of shares of any class that is preferred or limited as to dividends or assets are not entitled to any preemptive right.
3. Holders of shares of common stock are not entitled to any preemptive right to shares of any class that is preferred or limited as to dividends or assets or to any obligations, unless convertible into shares of common stock or carrying a right to subscribe to or acquire shares of common stock.

4. Holders of common stock without voting power have no preemptive right to shares of common stock with voting power.

5. The preemptive right is only an opportunity to acquire shares or other securities under such terms and conditions as the board of directors may fix for the purpose of providing a fair and reasonable opportunity for the exercise of the right.

89 Acts, ch 288, §185 SF 502  
NEW section

## CHAPTER 491

### CORPORATIONS FOR PECUNIARY PROFIT

Applicable to domestic corporations organized prior to July 1, 1971

#### 491.1 Who may incorporate.

Any number of persons may become incorporated under this chapter prior to July 1, 1971, for the transaction of any lawful business, but the incorporation confers no power or privilege not possessed by natural persons, except as provided in this chapter. All domestic corporations shall be organized under chapter 490, except as expressly provided otherwise in chapter 490.

89 Acts, ch 83, §65 SF 112; 89 Acts, ch 288, §186 SF 502  
1989 amendments by 89 Acts, ch 288, §186, effective December 31, 1989; 89 Acts, ch 288, §196 SF 502  
See Code editor's note to §22.7  
Section amended

#### 491.101A Poison pill defense authorized.

The terms and conditions of stock rights or options issued by the corporation may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer, or receipt of such rights or options by a person, or group of persons, owning or offering to acquire a specified number or percentage of the outstanding common shares or other securities of the corporation, or a transferee of the offeror, or that invalidate or void such stock rights or options held by an offeror or a transferee of the offeror.

89 Acts, ch 288, §187 SF 502  
Effective December 31, 1989; 89 Acts, ch 288, §196 SF 502  
NEW section

#### 491.101B Consideration of community interests in consideration of acquisition proposals.

1. A director, in determining what is in the best interest of the corporation when considering a tender offer or proposal of acquisition, merger, consolidation, or similar proposal, may consider any or all of the following community interest factors, in addition to consideration of the effects of any action on shareholders:

- a. The effects of the action on the corporation's employees, suppliers, creditors, and customers.
- b. The effects of the action on the communities in which the corporation operates.

c. The long-term as well as short-term interests of the corporation and its shareholders, including the possibility that these interests may be best served by the continued independence of the corporation.

2. If on the basis of the community interest factors described in subsection 1, the board of directors determines that a proposal or offer to acquire or merge the corporation is not in the best interests of the corporation, it may reject the proposal or offer. If the board of directors determines to reject any such proposal or offer, the board of directors has no obligation to facilitate, to remove any barriers to, or to refrain from impeding, the proposal or offer. Consideration of any or all of

the community interest factors is not a violation of the business judgment rule or of any duty of the director to the shareholders, or a group of shareholders, even if the director reasonably determines that a community interest factor or factors outweigh the financial or other benefits to the corporation or a shareholder or group of shareholders.

89 Acts, ch 288, §188 SF 502  
Effective December 31, 1989; 89 Acts, ch 288, §196 SF 502  
NEW section

## CHAPTER 496A

### BUSINESS CORPORATIONS

Repealed effective December 31, 1989, by 89 Acts, ch 288, §195, 196 SF 502  
See chapter 490; transition and savings provisions, §490.1701-490.1704

For amendments to §496A.101 effective from July 1, 1989, to December 31, 1989, see 89 Acts, ch 287, §1-3 SF 407

## CHAPTER 496B

### ECONOMIC DEVELOPMENT CORPORATIONS

#### **496B.8 Stockholders privileges.**

Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective articles of incorporation, agreements of association, or trust indentures:

1. Any person, as defined in the Iowa business corporation Act, is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bond, security or other evidences of indebtedness created by, or the shares of the capital stock of, development corporations, and while owners of said shares to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory agency of this state.

2. Any financial institution is hereby authorized to become a member of a development corporation and to make loans to such corporation.

3. Any financial institution which does not become a member of a development corporation shall not be permitted to acquire any shares of the capital stock of such development corporation.

4. Each financial institution which becomes a member of a development corporation is hereby authorized to acquire, purchase, hold, sell, assign, mortgage, pledge, or otherwise dispose of, any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the development corporation, of which it is a member and while owners of such shares to exercise all rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory agency of this state; provided that the amount of the capital stock of any development corporation which may be acquired by any member pursuant to the authority granted herein, shall not exceed ten percent of the loan limit of such member. The amount of capital stock of a development corporation which any member is authorized to acquire pursuant to the authority granted herein, is in addition to the amount of capital stock in other corporations which such member may otherwise be authorized to acquire.

## CHAPTER 504A

## IOWA NONPROFIT CORPORATION ACT

**504A.6 Corporate name.**

1. A corporate name shall not contain language stating or implying that the corporation is incorporated for a purpose other than that permitted by its articles of incorporation.

2. Except as authorized by subsections 3 and 4, a corporate name must be distinguishable upon the records of the secretary of state from all of the following:

a. The corporate name of a nonprofit corporation or business corporation incorporated or authorized to conduct affairs or do business in this state.

b. A corporate name reserved under section 504A.7, or reserved or registered under the Iowa business corporation Act.

c. The fictitious name of a foreign business or nonprofit corporation authorized to transact business or conduct affairs in this state because its real name is unavailable.

3. A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary's records from one or more of the names described in subsection 2. The secretary of state shall authorize use of the name applied for if one of the following conditions applies:

a. The other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

b. The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

4. A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to conduct affairs or transact business in this state and the proposed user corporation meets one of the following conditions:

a. Has merged with the other corporation.

b. Has been formed by reorganization of the other corporation.

c. Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. This chapter does not control the use of fictitious names; however, if a corporation uses a fictitious name in this state it shall deliver to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

89 Acts, ch 288, §189 SF 502

1989 amendments effective December 31, 1989; 89 Acts, ch 288, §196 SF 502

Section stricken and rewritten

**504A.9 Change of registered office or registered agent.**

A corporation may change its registered office or change its registered agent or agents, or both office and agent or agents upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.

2. The address of its then registered office.

3. If the address of its registered office be changed, the address to which the registered office is to be changed.

4. The name of its then registered agent or agents.

5. If its registered agent or agents be changed, the name of its successor registered agent or agents.

6. That the address of its registered office and the address of the business office of its registered agent or agents, as changed, will be identical.

7. That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed by the corporation by its president or a vice president. Such statement shall be delivered to the secretary of state for filing and recording in the secretary of state's office, and the statement shall be filed and recorded in the office of the county recorder. If the registered office is changed from one county to another, the statement shall be filed and recorded in the office of the county recorder of the county to which the registered office is changed, and a certified copy of the statement shall be furnished by the secretary of state and delivered to the office of the county recorder for filing in the county in which the registered office was located prior to the filing of the statement.

If the registered office is changed from one county to another, the corporation shall also cause to be filed and recorded forthwith in the office of the recorder of the county to which such registered office is changed, its original articles of incorporation and all amendments thereto, or copies thereof certified by the secretary of state, or its restated articles and all amendments thereto, or copies thereof certified by the secretary of state.

If a registered agent or agents change the agent's or agents' business address to another place within the same county, the agent or agents may change the address of the registered office of any corporations of which that person is registered agent by filing a statement as required above for each corporation, or a single statement for all corporations named therein, except that it need be signed only by the registered agent or agents and need not be responsive to subsections 5 and 7 above, and must recite that notification of such change has been mailed to each such corporation.

The change of address of registered office or the change of registered agent or agents or both registered office and agent or agents, as the case may be, shall become effective upon the filing of such statement by the secretary of state, but until such statement is recorded in the office of the recorder as above prescribed, service of process, notice or demand required or permitted by law to be served upon the corporation may be served upon the person who was its registered agent at its registered office prior to the filing of such statement with the same force and effect as if no change in registered office or registered agent had been made.

Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall record one copy and forthwith mail the other copy thereof to the corporation in care of an officer, who is not the resigning registered agent, at the address of such officer as shown by the most recent annual report of the corporation. The copy recorded by the secretary of state shall be sent by the secretary to the county recorder of the county in which the registered office is located for recording in the county recorder's office. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the annual report pursuant to section 504A.83, provided that the form contains the information required in this section. If the secretary of state determines that an annual report does not contain the information required by section 504A.83 but otherwise meets the requirements of this section for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent before returning the annual report to the corporation pursuant to section 504A.84. The secretary of state shall deliver a notice certifying the change in registered office or registered agent to the office of the county recorder for filing and recording. A statement of change of registered

office or registered agent pursuant to this paragraph shall be executed by a person authorized to execute the annual report.

89 Acts, ch 171, §1, 2 HF 678  
 Unnumbered paragraph 2 amended  
 NEW unnumbered paragraph 7 (at end of section)

### **504A.32 Procedure for filing and recording of documents.**

If in this chapter, it is required that any document be:

1. Filed in the office of the secretary of state, the secretary of state, when the secretary finds that such document conforms to law and when all fees and taxes due the secretary have been paid as in this chapter prescribed, shall endorse on such document, the word "Filed", and the month, day and year of the filing thereof and file the same in the secretary of state's office;
2. Recorded in the office of the secretary of state, the secretary of state, upon filing thereof, shall record the same;
3. Filed and recorded in the office of the county recorder, the secretary of state upon recording such document in the secretary of state's office shall forward the same to the county recorder of the county wherein the registered office of the corporation is located, and shall forward a duplicate executed copy certified by the secretary as a true copy of the filed original to such other county recorder, if any, as is required by this chapter. Upon receipt thereof and upon receipt of recording fees due the county recorder, such county recorder shall record and index such instrument and endorse thereon the date of filing in such county and the book and page in which recorded. The recorder of each county shall keep in the county recorder's office an alphabetically subdivided index book for articles of incorporation and other instruments the recording of which in the county recorder's office is provided for by this chapter, which book shall have as a minimum, columns headed with "Name of Corporation", "Place of Registered Office", "Day, Month and Year of Filing" and the reference to the book and page or other record where recorded and shall make appropriate entries in said index for each such instrument recorded by the recorder.

Except for a statement of change of registered office or registered agent filed pursuant to section 504A.9 or 504A.73, and an annual report filed pursuant to section 504A.83, any instrument required to be filed and recorded in the office of the secretary of state only, shall be returned by the secretary to the corporation or its representative. Any instrument required to be filed and recorded in the office of the county recorder shall be returned by the recorder to the corporation or its representative.

89 Acts, ch 171, §3 HF 678  
 Unnumbered paragraph 2 (at end of section) amended

### **504A.67 Name of a foreign corporation.**

1. If the corporate name of a foreign corporation does not satisfy the requirements of section 504A.6, the foreign corporation, to obtain or maintain a certificate of authority to conduct affairs in this state, may use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.
2. Except as authorized by subsections 3 and 4, the corporate name, including a fictitious name, of a corporation must be distinguishable upon the records of the secretary of state from all of the following:
  - a. The corporate name of a nonprofit or business corporation incorporated or authorized to conduct affairs or to transact business in this state.
  - b. A corporate name reserved under section 504A.7 or section 490.402, or registered under section 490.403.
  - c. The fictitious name of another foreign business or nonprofit corporation authorized to transact business or conduct affairs in this state.

3. A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business or conduct affairs in this state, that is not distinguishable upon the records of the secretary of state from the name applied for. The secretary of state shall authorize use of the name applied for if one of the following conditions applies:

a. The other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

b. The applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

4. A foreign corporation may use in this state the name, including a fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business or conduct affairs in this state and the foreign corporation meets one of the following conditions:

a. Has merged with the other corporation.

b. Has been formed by reorganization of the other corporation.

c. Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. If a foreign corporation authorized to conduct affairs in this state changes its corporate name to one that does not satisfy the requirements of section 504A.6, it shall not conduct affairs in this state under the changed name until it adopts a name satisfying the requirements of section 504A.6 and obtains an amended certificate of authority.

89 Acts, ch 288, §190 SF 502

1989 amendments effective December 31, 1989; 89 Acts, ch 288, §196 SF 502

Section stricken and rewritten

#### **504A.69 Application for certificate of authority.**

A foreign corporation, in order to procure a certificate of authority to conduct affairs in this state, shall make application therefor to the secretary of state, which application shall set forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.

2. The date of incorporation and the period of duration of the corporation.

3. The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

4. The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent or agents in this state at such address.

5. The purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this state.

6. The names and respective addresses of the directors and officers of the corporation.

7. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this state.

The application shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such application.

89 Acts, ch 171, §4 HF 678

Unnumbered paragraph 2 (at end of section) amended

### 504A.70 Filing of application for certificate of authority.

The application of the corporation for a certificate of authority, together with a certificate of good standing or existence, duly certified by the proper officer of the state or country under the laws of which it is incorporated, shall be delivered to the secretary of state for filing in the secretary of state's office.

Upon the filing of the application the secretary of state shall issue a certificate of authority to conduct affairs in this state to which the secretary shall affix the application, and send the same to the corporation or its representative.

89 Acts, ch 171, §5 HF 678  
Section amended

### 504A.73 Change of registered office or registered agent of foreign corporation.

A foreign corporation authorized to conduct affairs in this state may change its registered office or change its registered agent or agents, or both office and agent or agents, upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.
2. The address of its then registered office.
3. If the address of its registered office be changed, the address to which the registered office is to be changed.
4. The name of its then registered agent or agents.
5. If its registered agent or agents be changed, the name of its successor registered agent or agents.
6. That the address of its registered office and the address of the business office of its registered agent or agents, as changed, will be identical.
7. That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed by the corporation by its president or a vice president, and verified by that person, and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, the secretary shall file such statement in the secretary of state's office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent or agents, or both, as the case may be, shall become effective.

If a registered agent or agents change the agent's or agents' business address to another place within the same county, the agent or agents may change such address and the address of the registered office of any corporations of which that person is registered agent by filing a statement as required above for each corporation, or a single statement for all corporations named therein, except that it need be signed only by the registered agent or agents and need not be responsive to subsections 5 and 7 above, and must recite that notification of such change has been mailed to each such corporation. Such statement executed and filed by a registered agent shall become effective upon the filing thereof in the manner as required above for statements executed by the foreign corporation.

Any registered agent of a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the annual report pursuant to section 504A.83, provided that the form contains the information required in this section. If the secretary of state determines that an annual report does not contain the information required by section 504A.83 but otherwise

meets the requirements of this section for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent before returning the annual report to the corporation pursuant to section 504A.84. The secretary of state shall deliver a notice certifying the change in registered office or registered agent to the office of the county recorder for filing and recording. A statement of change of registered office or registered agent pursuant to this paragraph shall be executed by a person authorized to execute the annual report.

89 Acts, ch 171, §6 HF 678  
NEW unnumbered paragraph 5 (at end of section)

#### **504A.77 Amended certificate of authority.**

A foreign corporation authorized to conduct affairs in this state shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the secretary of state.

The requirements in respect to the form and contents of the application, the manner of its execution, the filing of the application with the secretary of state, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

89 Acts, ch 171, §7 HF 678  
Unnumbered paragraph 2 amended

#### **504A.79 Filing of application for withdrawal.**

The application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this chapter, the secretary shall, when all fees due the secretary have been paid as in this chapter prescribed:

1. Endorse on each of such duplicate originals the word "Filed", and the month, day and year of the filing thereof.
2. File one of such duplicate originals in the secretary of state's office.
3. Issue a certificate of withdrawal to which the secretary of state shall affix the other duplicate original.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in this state shall cease.

89 Acts, ch 171, §8 HF 678  
Unnumbered paragraph 1 amended

#### **504A.85 Fees for filing documents and issuing certificates.**

The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, twenty dollars.
2. Filing statement of election to accept the chapter, five dollars.
3. Filing articles of amendment and issuing a certificate of amendment, ten dollars.
4. Filing restated articles of incorporation, twenty dollars.
5. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, twenty dollars.
6. Filing an application to reserve a corporate name, ten dollars.
7. Filing a notice of transfer of a reserved corporate name, ten dollars.
8. Filing articles of dissolution, five dollars.

9. Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, twenty-five dollars.

10. Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority, twenty-five dollars.

11. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, five dollars.

12. Filing any other statement or report, except a statement of change of registered office or registered agent, of a domestic or foreign corporation, five dollars.

89 Acts, ch 171, §9, 10 HF 678  
 Subsection 8 stricken  
 Subsection 13 amended

#### **504A.87 Penalties imposed upon corporation.**

Each corporation, domestic or foreign, that fails or refuses to file its annual report for any year within the time prescribed by this chapter shall be subject to a penalty of five dollars to be assessed by the secretary of state.

Each corporation, domestic or foreign, that fails or refuses to answer truthfully and fully within the time prescribed by this chapter reasonable and proper interrogatories propounded by the secretary of state in accordance with the provisions of this chapter, shall be deemed to be guilty of a simple misdemeanor.

The secretary of state may cancel the certificate of incorporation of a corporation that fails or refuses to file its annual report for any year prior to the first day of October of the year in which it is due by issuing a certificate of the cancellation at any time after the expiration of thirty days following the mailing to the corporation of notice of the certification to the attorney general of the failure of the corporation to file the annual report as required by section 504A.54, provided the corporation has not filed the annual report prior to the issuance of the certificate of cancellation. Upon the issuance of the certificate of cancellation, the secretary of state shall send the certificate to the corporation at its registered office and shall retain a copy of the certificate in the permanent records of the secretary of state's office.

Upon the issuance of the certificate of cancellation, the corporate existence of the corporation shall terminate, subject to right of reinstatement as herein provided, and the corporation shall cease to conduct its affairs, except insofar as may be necessary for the "winding up" thereof or for securing reinstatement and the right of the corporation to the use of its name shall cease and such name shall thereupon be available to any other corporation or foreign corporation or for reservation as provided in this chapter. The cancellation of the certificate of incorporation of a corporation shall not take away or impair any remedy available to or against such corporation, its directors, officers or members for any right or claim existing or any liability incurred prior to such cancellation, but no action or proceeding thereon may be prosecuted by such corporation until it shall have been reinstated. Any such action or proceeding against such corporation may be defended by the corporation, if it has not been reinstated, in its corporate name to which there shall be appended the word "canceled" followed by the date of the issuance of the certificate of cancellation. Unless the corporation is reinstated, the corporation, upon the issuance of the certificate of cancellation, shall proceed to liquidate its affairs as provided by this chapter in cases of voluntary dissolution. However, the district court in a suit in equity shall have full power to liquidate the assets and affairs of such a corporation upon application by such corporation or in a suit by a member or director or creditor of such corporation when such corporation fails to proceed promptly with such liquidation or to make application to the court therefor. A copy of the certificate of cancellation, certified by the

secretary of state, shall be taken and received in all courts as prima-facie evidence of the cancellation of the certificate of incorporation as stated therein.

If the certificate of incorporation of a corporation has been canceled by the secretary of state as provided in this section for failure to file an annual report, such corporation shall be reinstated by the secretary of state at any time within five years following the date of the issuance by the secretary of state of the certificate of cancellation upon:

1. The delivery by the corporation to the secretary of state for filing in the secretary of state's office of an application for reinstatement, executed by its president or vice president and by its secretary or an assistant secretary and verified by one of the officers signing such application, which shall set forth:

a. The date of the issuance by the secretary of state of the certificate of cancellation;

b. The name of the corporation at the time of the issuance of the certificate of cancellation and, if, at the time of the filing of the application for reinstatement, another corporation or foreign corporation is entitled to use such name or such name is then reserved or registered as provided in this chapter, the name of the corporation as changed, which shall be a name then available under the laws of this state; and

c. The address, including street and number, if any, of the registered office of the corporation upon the reinstatement thereof, which shall be located in the same county as the county in which the registered office of the corporation was located at the time of the issuance of the certificate of cancellation, and the name of its registered agent or agents at such address upon the reinstatement of the corporation;

2. The filing with the secretary of state by the corporation of all annual reports then due and theretofore becoming due;

3. The payment to the secretary of state by the corporation of all annual license fees and penalties due and becoming due.

The secretary of state, upon filing the application for reinstatement, shall issue a certificate of reinstatement and file and record the same in the secretary of state's office and, if the application for reinstatement shall set forth a change in the name of the corporation, as required by this section, the same shall constitute an amendment to the articles of incorporation of the corporation and the certificate of reinstatement shall set forth such fact and shall be filed and recorded in the office of the county recorder. Upon the issuance of the certificate of reinstatement, the corporation shall be entitled to continue to act as a corporation for the unexpired portion of its corporate period as fixed by its articles of incorporation, except, that the corporation shall not be entitled to use the name of the corporation at the time of the issuance of the certificate of cancellation if another corporation or foreign corporation is entitled to use such name or such name is then reserved as provided in this chapter.

89 Acts, ch 171, §11 HF 678  
Subsection 3 amended

## 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, or failing to include interest on the payment of claims when required under section 511.38.

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.

89 Acts, ch 321, §32 HF 779  
Subsection 9, paragraph f 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 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 exceptions of subsections 2 and 3.

89 Acts, ch 76, §9 HF 256  
Unnumbered paragraph 1 amended

## CHAPTER 508

### LIFE INSURANCE COMPANIES

#### 508.12 Redomestication of insurers.

An insurer which is organized under the laws of any state, and is admitted to do business in this state for the purpose of writing insurance authorized by this chapter may become a domestic insurer by complying with section 490.902 or 491.33 and with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business in this state, and, upon payment to the commissioner of insurance of a transfer tax in a sum equal to twenty-five percent of the premium tax paid pursuant to the provisions of chapter 432 for the last calendar year immediately preceding its becoming a domestic corporation or the sum of ten thousand dollars, whichever is the lesser but not less than one thousand dollars, may become a domestic corporation and be entitled to like certificates of its corporate existence and license to transact business in this state, and be subject in all respects to the authority and jurisdiction thereof.

The certificates of authority, agent's appointments and licenses, rates, and other items which are in existence at the time any insurer transfers its corporate domicile to this state, pursuant to this section, shall continue in full force and effect upon such transfer. For purposes of existing authorizations and all other corporate purposes, the insurer is deemed the same entity as it was prior to the transfer of its domicile. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to any new name of the company or its new location unless so ordered by the commissioner of insurance.

89 Acts, ch 288, §191 SF 502  
1989 amendment effective December 31, 1989; 89 Acts, ch 288, §196 SF 502  
Section amended

### **508.14 Violation by domestic company—dissolution or administrative penalty.**

Upon a failure of a company organized under the laws of this state to make the deposit provided in section 511.8, subsection 16, or file the statement in the time herein stated, or to file in a timely manner any financial statement required by rule of the commissioner of insurance, the commissioner of insurance shall notify the attorney general of the default, who shall at once apply to the district court of the county where the home office of the company is located for an order requiring the company to show cause, upon reasonable notice to be fixed by the court, why its business shall not be discontinued. If, upon the hearing, no sufficient cause is shown, the court shall decree its dissolution. In lieu of a district court action authorized by this section, the commissioner may impose an administrative penalty of three hundred dollars upon the company.

89 Acts, ch 321, §33 HF 779  
Section amended

### **508.15 Violation by foreign company.**

Companies organized and chartered by the laws of a foreign state or country, failing to file the evidence of investment and statement within the time fixed, or failing to timely file any financial statement required by rule of the commissioner of insurance, shall forfeit and pay the sum of three hundred dollars, to be collected in an action in the name of the state and paid to the treasurer of state for deposit in the general fund of the state, and their right to transact further new business in this state shall immediately cease until the requirements of this chapter have been fully complied with.

89 Acts, ch 321, §34 HF 779  
Section amended

## **CHAPTER 508C**

### **IOWA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION**

#### **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, certificates under group policies or contracts, and unallocated annuity 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. An unallocated annuity contract issued to an employee benefit plan protected under the federal pension benefit guaranty corporation, which is not issued to or in connection with a specific employee, union, or association of natural persons, or any portion of a financial guarantee.

e. A policy or contract issued by a company which is licensed under chapter 509A, 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.

h. An annuity contract issued to a government lottery or to a liability insurer in connection with a structured settlement.

89 Acts, ch 83, §67 SF 112  
Subsection 3, paragraph e amended

## CHAPTER 509

### GROUP INSURANCE

#### 509.3 Provisions as part of accident or health policy.

All policies of group accident or health insurance or combination thereof issued in this state shall contain in substance the following provisions:

1. The policy shall have a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person.

2. A provision that the company will issue to the policyholder for delivery to each person insured under such policy an individual certificate setting forth a statement as to the insurance protection to which the person is entitled, to whom the insurance benefits are payable, and such provisions of the policy as are, in the opinion of the commissioner of insurance, necessary to inform the holder thereof as to the holder's rights under the policy.

3. A provision that to the group or class thereof originally insured shall be added, from time to time, all new persons eligible to insurance in such group or class.

4. A provision that if the insurance on a person or insurance on a person and the person's dependents covered by the policy ceases because of termination of employment or of membership in the class, the person and the person's dependents may continue their accident or health insurance under the group policy and

may subsequently apply for a converted policy without evidence of insurability, as provided in chapter 509B.

5. A provision shall be made available to policyholders, under group policies covering vision care services or procedures, for payment of necessary medical or surgical care and treatment provided by an optometrist licensed under chapter 154 if the care and treatment are provided within the scope of the optometrist's license and if the policy would pay for the care and treatment if the care and treatment were provided by a person engaged in the practice of medicine or surgery as licensed under chapter 148 or 150A. The policy shall provide that the policyholder may reject the coverage or provision if the coverage or provision for services which may be provided by an optometrist is rejected for all providers of similar vision care services as licensed under chapter 148, 150A, or 154. This subsection applies to group policies delivered or issued for delivery after July 1, 1983, and to existing group policies on their next anniversary or renewal date, or upon expiration of the applicable collective bargaining contract, if any, whichever is later. This subsection does not apply to blanket, short-term travel, accident only, limited or specified disease, or individual or group conversion policies, or policies designed only for issuance to persons for coverage under Title XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

6. A provision shall be made available to policyholders, under group policies covering hospital, medical, or surgical expenses, for payment for diabetic outpatient self-management education programs, under terms and conditions agreed upon between the insurer and the policyholder, subject to utilization controls. This subsection applies to group policies delivered or issued for delivery after July 1, 1984, and to existing group policies on their next anniversary or renewal date, or upon expiration of the applicable collective bargaining contract, if any, whichever is later. This subsection does not apply to blanket, short-term travel, accident only, limited or specified disease, or individual or group conversion policies, or policies designed only for issuance to persons for coverage under Title XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan. Coverage shall apply only to programs directed and supervised by a physician licensed under chapter 148 or 150A. Covered diabetic outpatient self-management education programs shall be provided by health care professionals including, but not limited to, physicians, registered nurses, and licensed pharmacists who are knowledgeable about the disease process of diabetes and the treatment of diabetic patients. As used in this subsection, "*diabetic outpatient self-management education programs*" means instruction which will enable diabetic patients and their families to gain an understanding of the diabetic disease process and the daily management of diabetic therapy thereby avoiding frequent hospitalizations and complications. Such programs shall meet standards developed by the Iowa department of public health in consultation with American diabetes association, Iowa affiliate, for certification of outpatient diabetes education programs. This subsection does not require the coverage for programs whose sole or primary purpose is weight reduction.

7. A provision shall be made available to policyholders under group policies covering diagnosis and treatment of human ailments for payment or reimbursement for necessary diagnosis or treatment provided by a chiropractor licensed under chapter 151, if the diagnosis or treatment is provided within the scope of the chiropractor's license and if the policy would pay or reimburse for the diagnosis or treatment by a person licensed under chapter 148, 150, or 150A of the human ailment, irrespective of and disregarding variances in terminology employed by the various licensed professions in describing the human ailment or its diagnosis or its treatment. The policy shall provide that the policyholder may reject the coverage or provision if the coverage or provision for diagnosis or

treatment of a human ailment by a chiropractor is rejected for all providers of diagnosis or treatment for similar human ailments licensed under chapter 148, 150, 150A, or 151. A policy of group health insurance may limit or make optional the payment or reimbursement for lawful diagnostic or treatment service by all licensees under chapters 148, 150, 150A, and 151 on any rational basis which is not solely related to the license under or the practices authorized by chapter 151 or is not dependent upon a method of classification, categorization, or description based directly or indirectly upon differences in terminology used by different licensees in describing human ailments or their diagnosis or treatment. This subsection applies to group policies delivered or issued for delivery after July 1, 1986, and to existing group policies on their next anniversary or renewal date, or upon expiration of the applicable collective bargaining contract, if any, whichever is later. This subsection does not apply to blanket, short-term travel, accident-only, limited or specified disease, or individual or group conversion policies, or policies under Title XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

8. A provision shall be made available to policyholders, under group policies covering hospital, medical, or surgical expenses, for payment of covered services determined to be medically necessary provided by registered nurses certified by a national certifying organization, which organization shall be identified by the Iowa board of nursing pursuant to rules adopted by the board, if the services are within the practice of the profession of a registered nurse as that practice is defined in section 152.1, under terms and conditions agreed upon between the insurer and the policyholder, subject to utilization controls. This subsection shall not require payment for nursing services provided by a certified nurse practicing in a hospital, nursing facility, health care institution, physician's office, or other noninstitutional setting if the certified nurse is an employee of the hospital, nursing facility, health care institution, physician, or other health care facility or health care provider. This subsection applies to group policies delivered or issued for delivery in this state on or after July 1, 1989, and to existing group policies on their next anniversary or renewal dates, or upon expiration of the applicable collective bargaining contract, if any, whichever is later. This subsection does not apply to blanket, short-term travel, accident only, limited or specified disease, or individual or group conversion policies, policies rated on a community basis, or policies designed only for issuance to persons for eligible coverage under Title XVIII of the federal Social Security Act, or any other similar coverage under a state or federal government plan.

89 Acts, ch 164, §2 HF 729  
NEW subsection 8

### **509.5 Authorized companies.**

1. Any level premium life insurance company, organized on the stock or mutual plan and authorized to transact business under the provisions of chapter 508 may, upon complying with the provisions of said chapter and of this chapter, issue contracts providing for group life, or health, or accident insurance, or combinations thereof as defined in this chapter.

2. A casualty company organized on the stock or mutual plan, or accident and health association authorized to transact business under chapter 515, or a reciprocal or interinsurance exchange organized under chapter 520, may, by complying with those chapters and this chapter, issue contracts providing for health or accident insurance, or combinations of health and accident insurance, as defined in this chapter.

89 Acts, ch 83, §68 SF 112  
Subsection 2 amended

## CHAPTER 510

### MANAGING GENERAL AGENTS AND ADMINISTRATORS

Former ch 510 repealed by 88 Acts, ch 1112, §207

#### MANAGING GENERAL AGENTS

##### 510.1 Definition.

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

*"Managing general agent"* means a person, acting as an independent contractor with respect to a domestic insurer, except a county mutual association that operates only within a given county and counties contiguous to that county, who performs an underwriting or claims function for the insurer, but does not include any of the following:

1. A licensed attorney retained for the defense of an insured, as required or allowed by the policy of insurance issued by the domestic insurer.
2. A licensed insurance agent who is extended settlement authority by an insurer as an incidental part of the agent's duties as an agent.
3. An independent claims adjuster who receives periodic assignments of claims from an insurer.
4. A person retained for the purpose of obtaining photographs, diagrams, or otherwise verifying information submitted on applications for insurance, and who does not perform any other claim or underwriting services for the insurer.

89 Acts, ch 227, §1 SF 272  
NEW section

##### 510.2 Contracts with managing general agents.

A domestic insurer shall not enter into a contract with a managing general agent unless the domestic insurer notifies the commissioner in writing of its intention to enter into the contract at least thirty days prior to entering into the contract or within a shorter time permitted by the commissioner and the commissioner has not disapproved of the contracts within the time period. The commissioner shall not approve the contracts if the commissioner finds any of the following:

1. The service or management charges in the contract are based upon criteria unrelated either to the insurer's profits or to the reasonable, customary, and usual charges for such services to the company.
2. Management personnel or other employees of the insurance company are to be performing management functions and receiving any remuneration for those management functions through the contract in addition to the compensation received directly from the insurance company for their services.
3. The contract would transfer substantial control of the insurer or any of the powers vested in the board of directors, by statute, articles of incorporation, or bylaws, or substantially all of the basic functions of the insurer's management to the managing general agent.
4. The contract contains provisions which would be clearly detrimental to the best interest of policyholders, stockholders, or members of the company.
5. The officers and directors of the managing general agent firm are of known bad character or have been affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations with any person known to have been involved in the improper manipulation of assets, accounts, or reinsurance.

If the commissioner disapproves of a contract, notice of the disapproval shall be given to the insurer, specifying the reasons in writing. The commissioner shall

grant any party to the contract a hearing on the disapproval upon request pursuant to chapter 17A.

89 Acts, ch 227, §2 SF 272  
NEW section

### 510.3 Liability of managing general agents.

Notwithstanding any obligation of a director or officer of an insolvent insurer to the liquidator of the insolvent insurer, a managing general agent of a domestic insurer against whom an order of liquidation has been entered is liable for fees paid to the managing general agent prior to the entry of the order of liquidation upon a finding that the rendering of services, or failure to render services contracted for, substantially caused or contributed to the insolvency of the domestic insurer, and was pursuant to a contract which had not been submitted to the commissioner, or which had been submitted to the commissioner and disapproved, or the services did not meet accepted standards for such services.

89 Acts, ch 227, §3 SF 272  
NEW section

### 510.4 through 510.10 Reserved.

#### ADMINISTRATORS

### 510.11 Definitions.

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

1. "Administrator" means a person who collects charges or premiums from, or who adjusts or settles claims on, residents of this state in connection with life or health insurance coverage or annuities other than any of the following:
  - a. A union or association on behalf of its members.
  - b. An insurance company which is either licensed in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business.
  - c. An entity licensed under chapter 514 including its sales representatives licensed in this state when engaged in the performance of its duties as sales representatives.
  - d. A life or health agent or broker licensed in this state, whose activities are limited exclusively to the sale of insurance.
  - e. A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.
  - f. A trust, its trustees, agents, and employees acting under the trust, established in conformity with 29 U.S.C. §186.
  - g. A trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees, and employees acting under the trust.
  - h. A custodian, its agents, and employees acting pursuant to a custodian account which meets the requirements of section 401(f) of the Internal Revenue Code.
  - i. A bank, credit union, or other financial institution which is subject to supervision or examination by federal or state banking authorities.
  - j. A credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized it to do so, if the company does not adjust or settle claims.
  - k. A person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney-at-law, and who does not collect charges or premiums in connection with life or health insurance coverage or annuities.
2. "Life or health insurance" includes, but is not limited to, the following:
  - a. Individual or group accident and sickness insurance providing coverage on an expense-incurred basis.

- b. An individual or group hospital or medical service contract issued pursuant to chapter 509, 514, or 514A.
- c. An individual or group health maintenance organization contract regulated under chapter 514B.
- d. An individual or group Medicare supplemental policy.
- e. A long-term care policy.
- f. An individual or group life insurance policy or annuity issued pursuant to chapter 508, 508A, or 509A.

89 Acts, ch 227, §4 SF 272  
NEW section

#### **510.12 Written agreement necessary.**

A person shall not act as an administrator without a written agreement between the administrator and the insurer, and the written agreement shall be retained as part of the official records of both the insurer and the administrator for the duration of the agreement plus five years. The written agreement shall contain provisions which include the requirements of sections 510.11 through 510.16, except insofar as those requirements do not apply to the functions performed by the administrator.

When a policy is issued to a trustee, a copy of the trust agreement and any amendments to the trust agreement shall be furnished to the insurer by the administrator and shall be retained as part of the official records of both the insurer and the administrator for the duration of the policy plus five years.

89 Acts, ch 227, §5 SF 272  
NEW section

#### **510.13 Payment to administrator.**

If an insurer uses the services of an administrator under the terms of a written contract as required in section 515.167, payment to the administrator of any premiums or charges for insurance by or on behalf of the insured shall be deemed to have been received by the insurer, and the payment of return premiums or claims by the insurer to the administrator shall not be deemed payment to the insured or claimant until the payments are received by the insured or claimant. This section does not limit any right of the insurer against the administrator resulting from the administrator's failure to make payments to the insurer, insureds, or claimants.

89 Acts, ch 227, §6 SF 272  
NEW section

#### **510.14 Maintenance of information.**

An administrator shall maintain at its principal administrative office for the duration of the written agreement referred to in section 510.12 plus five years, adequate books and records of all transactions between it, insurers, and insured persons. The administrator's books and records shall be maintained in accordance with prudent standards of insurance recordkeeping. The commissioner shall have access to such books and records for the purpose of examination, audit, and inspection. Trade secrets contained in an administrator's books and records, including but not limited to the identity and addresses of policyholders and certificate holders, shall be confidential, except the commissioner may use trade secret information in any proceeding instituted against the administrator. The insurer retains the right to continuing access to the administrator's books and records sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement between the insurer and administrator on the proprietary rights of the parties in the administrator's books and records.

89 Acts, ch 227, §7 SF 272  
NEW section

**510.15 Approval of advertising.**

An administrator may use only such advertising pertaining to the business underwritten by an insurer as has been approved by the insurer in advance of its use.

89 Acts, ch 227, §8 SF 272  
NEW section

**510.16 Underwriting provision.**

The agreement shall provide for the underwriting or other standards pertaining to the business underwritten by the insurer.

89 Acts, ch 227, §9 SF 272  
NEW section

**510.17 Premium collection.**

1. All insurance charges or premiums collected by an administrator on behalf of or for an insurer, and return premiums received from the insurer, shall be held by the administrator in a fiduciary capacity. Such funds shall be immediately remitted to the person or persons entitled to them, or shall be deposited promptly in a fiduciary bank account established and maintained by the administrator. If charges or premiums so deposited have been collected on behalf of or for more than one insurer, the administrator shall cause the bank in which the fiduciary account is maintained to keep records clearly recording the deposits in and withdrawals from the account on behalf of or for each insurer. The administrator shall promptly obtain and keep copies of all such records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to deposits and withdrawals on behalf of or for that insurer.

2. The administrator shall not pay a claim by withdrawal from the fiduciary account. Withdrawals from the fiduciary account shall be made, as provided in the written agreement between the administrator and the insurer, for any of the following:

- a. Remittance to an insurer entitled thereto.
- b. Deposit in an account maintained in the name of the insurer.
- c. Transfer to and deposit in a claims-paying account, with claims to be paid as provided in section 510.18.
- d. Payment to a group policyholder for remittance to the insurer entitled thereto.
- e. Payment to the administrator of its commission, fees, or charges.
- f. Remittance of return premiums to the persons entitled thereto.

89 Acts, ch 227, §10 SF 272  
NEW section

**510.18 Payment of claims.**

A claim paid by the administrator from funds collected on behalf of the insurer shall be paid only on a draft of and as authorized by the insurer.

89 Acts, ch 227, §11 SF 272  
NEW section

**510.19 Claim adjustment and settlement.**

The compensation paid to an administrator shall not be contingent on claim experience on policies for which the administrator adjusts or settles claims. This section does not prevent the compensation of an administrator from being based on premiums or charges collected or number of claims paid or processed.

89 Acts, ch 227, §12 SF 272  
NEW section

**510.20 Notification required.**

When the services of an administrator are used, the administrator shall provide a written notice, approved by the insurer, to insured individuals, advising them of

the identity of and relationship among the administrator, the policyholder, and the insurer. When an administrator collects funds, it must identify and state separately in writing to the person paying to the administrator any charge or premium for insurance coverage the amount of any such charge or premium specified by the insurer for such insurance coverage.

89 Acts, ch 227, §13 SF 272  
NEW section

#### **510.21 Certificate of registration required.**

A person shall not act as or represent oneself to be an administrator in this state, other than an adjuster licensed in this state for the kinds of business for which the person is acting as an administrator, unless the person holds a current certificate of registration as an administrator issued by the commissioner of insurance. A certificate of registration as an administrator is renewable every three years. Failure to hold a certificate subjects the administrator to the sanctions set out in section 507B.7. The certificate shall be issued by the commissioner to an administrator unless the commissioner, after due notice and hearing, determines that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation, or has had a previous application for an insurance license denied for cause within the preceding five years.

An application for registration shall be accompanied by a filing fee of one hundred dollars. After notice and hearing, the commissioner may impose any or all of the sanctions set out in section 507B.7, upon finding that either the administrator violated any of the requirements of section 515.134 and sections 510.1 through this section, or the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

89 Acts, ch 227, §14 SF 272  
NEW section

#### **510.22 Waiving of requirements.**

The commissioner may waive the requirements of section 510.21 for any person or class of persons. The factors taken into account in granting a waiver shall include, but are not limited to whether:

1. The person acting as an administrator is primarily in a business other than that of administrator.
2. The financial strength and history of the organization indicates stability in its continuity of doing business.
3. The regular duties being performed as an administrator are such that the covered persons are not likely to be injured by a waiver of such requirements.

89 Acts, ch 227, §15 SF 272  
NEW section

## **CHAPTER 511**

### **PROVISIONS APPLYING TO LIFE INSURANCE COMPANIES AND ASSOCIATIONS**

#### **511.8 Investment of funds.**

A 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 is the net present value of all outstanding policies and contracts involving life contingencies. This section does not 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 "Service-men'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 commissioner. 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.

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 interest 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.

89 Acts, ch 83, §69 SF 112; 89 Acts, ch 311, §29 HF 778

\*48 Stat. L. 1246; 12 U.S.C. §1701 et seq.

\*\*58 Stat. L. 291; Repealed by Pub. L. No. 85-857, §14(87), 72 Stat. L. 1273; see 38 U.S.C. §1801 et seq.

\*\*\*60 Stat. L. 1062; Repealed by Pub. L. No. 87-128, §341(a); see 7 U.S.C. §1921 et seq.

Unnumbered paragraph 1 amended

Subsection 10, paragraph b amended

### 511.8A Agricultural land.

Agricultural land, as defined in section 172C.1, acquired as provided in section 511.8, subsection 10, paragraph "b", by a life insurance company or association incorporated by or organized under the laws of this or any other state, shall be sold or otherwise disposed of by the company or association within five years after title is vested in the company or association. A life insurance company or association is a corporation for purposes of chapter 172C.

89 Acts, ch 311, §30 HF 778

NEW SECTION

**511.15 Discrimination against domestic company.** Repealed by 89 Acts, ch 83, §87 SF 112

**511.26 Fee statute—applicability.**

The provisions of the chapter on insurance other than life apply as to fees under this chapter and chapter 508 except as modified by section 511.24.

89 Acts, ch 83, §70 SF 112  
Section amended

**511.38 Interest on delayed claims payments.**

1. When an insurance policy provides for the payment of its proceeds to a beneficiary upon the death of an individual and, without the written consent of the beneficiary, the company fails or refuses to pay the proceeds within thirty days after receipt of satisfactory proof of death, the company shall pay interest on the proceeds or any amount of the proceeds not paid within the thirty days, provided, however, if the policy requires a beneficiary to survive for a designated period after the death of the insured, the company shall pay interest on the proceeds or any amount of the proceeds not paid within thirty days after the designated period.

2. The interest owed on any amount of the proceeds of a policy under this section shall be computed from the date of receipt of the proof of death. The rate of interest shall be the higher of the following:

a. The effective rate of interest charged by the company on policy loans under section 511.36 on the date of receipt of proof of death.

b. The effective rate of interest paid by the company on death proceeds left on deposit with the company.

3. A payment of interest shall not be required under this section in any case in which the beneficiary elects to receive the proceeds under the policy by any means other than a lump sum payment.

89 Acts, ch 321, §35 HF 779  
NEW section

**CHAPTER 512****FRATERNAL BENEFICIARY SOCIETIES, ORDERS OR ASSOCIATIONS****512.7 Exclusive membership in religious order.**

A corporation organized before July 4, 1911, under the laws of this or any other state, whose membership is confined to the members of any one religious denomination, and whose plan of business permits, may take advantage of the preceding sections of this chapter by amendment to its articles of incorporation, and by complying with sections 512.27 to 512.32.

89 Acts, ch 83, §71 SF 112  
Section amended

**CHAPTER 514****NONPROFIT HEALTH SERVICE CORPORATIONS****514.7 Contracts—approval by commissioner—provisions to be available.**

The contracts by any such corporation with the subscribers for health care service shall at all times be subject to the approval of the commissioner of insurance. The commission shall require that participating pharmacies be reimbursed by the pharmaceutical service corporation at rates or prices equal to rates or prices charged nonsubscribers, unless the commissioner determines otherwise to prevent loss to subscribers.

A provision shall be available in approved contracts with hospital and medical service corporate subscribers under group subscriber contracts or plans covering

vision care services or procedures, for payment of necessary medical or surgical care and treatment provided by an optometrist licensed under chapter 154, if the care and treatment are provided within the scope of the optometrist's license and if the subscriber contract would pay for the care and treatment if it were provided by a person engaged in the practice of medicine or surgery as licensed under chapter 148 or 150A. The subscriber contract shall also provide that the subscriber may reject the coverage or provision if the coverage or provision for services which may be provided by an optometrist is rejected for all providers of similar vision care services as licensed under chapter 148, 150A, or 154. This paragraph applies to group subscriber contracts delivered after July 1, 1983, and to group subscriber contracts on their anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This paragraph does not apply to contracts designed only for issuance to subscribers eligible for coverage under Title XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

A provision shall be available in approved contracts with hospital and medical service corporate subscribers under group subscriber contracts or plans covering medical and surgical service, for payment for diabetic outpatient self-management education programs, under terms and conditions agreed upon between the corporation and subscriber group, subject to utilization controls. This paragraph applies to group subscriber contracts delivered after July 1, 1984, and to group subscriber contracts on their anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This paragraph does not apply to contracts designed only for issuance to subscribers eligible for coverage under Title XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan. Coverage shall apply only to programs directed and supervised by a physician licensed under chapter 148 or 150A. Covered diabetic outpatient self-management education programs shall be provided by health care professionals including, but not limited to, physicians, registered nurses, and licensed pharmacists who are knowledgeable about the disease process of diabetes and the treatment of diabetic patients. As used in this paragraph, "diabetic outpatient self-management education programs" means instruction which will enable diabetic patients and their families to gain an understanding of the diabetic disease process and the daily management of diabetic therapy thereby avoiding frequent hospitalizations and complications. Such programs shall meet standards developed by the Iowa department of public health in consultation with American diabetes association, Iowa affiliate, for certification of outpatient diabetes education programs. This paragraph does not require the coverage for programs whose sole or primary purpose is weight reduction.

A provision shall be made available in approved contracts with hospital and medical subscribers under group subscriber contracts or plans covering diagnosis and treatment of human ailments, for payment or reimbursement for necessary diagnosis or treatment provided by a chiropractor licensed under chapter 151 if the diagnosis or treatment is provided within the scope of the chiropractor's license and if the subscriber contract would pay or reimburse for the diagnosis or treatment of the human ailment, irrespective of and disregarding variances in terminology employed by the various licensed professions in describing the human ailment or their diagnosis or treatment, if it were provided by a person licensed under chapter 148, 150, or 150A. The subscriber contract shall also provide that the subscriber may reject the coverage or provision if the coverage or provision for diagnosis or treatment of a human ailment by a chiropractor is rejected for all providers of diagnosis or treatment for similar human ailments licensed under chapter 148, 150, 150A or 151. A group subscriber contract may limit or make optional the payment or reimbursement for lawful diagnostic or treatment service by all licensees under chapters 148, 150, 150A, and 151 on any

rational basis which is not solely related to the license under or the practices authorized by chapter 151 or is not dependent upon a method of classification, categorization, or description based upon differences in terminology used by different licensees in describing human ailments or their diagnosis or treatment. This paragraph applies to group subscriber contracts delivered after July 1, 1986, and to group subscriber contracts on their anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This paragraph does not apply to contracts designed only for issuance to subscribers eligible for coverage under Title XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

A provision shall be available in approved contracts with hospital and medical service corporate subscribers under group subscriber contracts or plans covering medical and surgical service, for payment of covered services determined to be medically necessary provided by certified registered nurses certified by a national certifying organization, which organization shall be identified by the Iowa board of nursing pursuant to rules adopted by the board, if the services are within the practice of the profession of a registered nurse as that practice is defined in section 152.1, under terms and conditions agreed upon between the corporation and subscriber group, subject to utilization controls. This paragraph shall not require payment for nursing services provided by a certified registered nurse practicing in a hospital, nursing facility, health care institution, a physician's office, or other noninstitutional setting if the certified registered nurse is an employee of the hospital, nursing facility, health care institution, physician, or other health care facility or health care provider. This paragraph applies to group subscriber contracts delivered in this state on or after July 1, 1989, and to group subscriber contracts on their anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This paragraph does not apply to limited or specified disease or individual contracts or contracts designed only for issuance to subscribers eligible for coverage under Title XVIII of the federal Social Security Act, contracts which are rated on a community basis, or any other similar coverage under a state or federal government plan.

89 Acts, ch 164, §3 HF 729  
NEW unnumbered paragraph 5

#### **514.21 Utilization review program.**

A utilization review program shall be established for purposes of health care cost control, according to usual and customary third-party insurance payment or reimbursement procedures, by a corporation subject to this chapter and by physician providers as defined in section 135.1 and registered nurse providers licensed under chapter 152. This utilization review program shall not be used directly or indirectly to circumvent the provisions for payment or reimbursement to providers of health care services as provided in section 509.3, subsections 7 and 8, and section 514.7.

89 Acts, ch 164, §4 HF 729  
Section amended

## **CHAPTER 514A**

### **ACCIDENT AND HEALTH INSURANCE**

Comprehensive study of state's health insurance needs, means to meet needs, proposal for mandatory employer-sponsored health insurance coverage; 89 Acts, ch 304, §407 SF 538

#### **514A.1 Definition of accident and sickness insurance policy.**

*"Policy of accident and sickness insurance"* as used in this chapter includes a policy or contract covering insurance against loss resulting from sickness, or from

bodily injury or death by accident, or both. For the purposes of this chapter the words "*policy of accident and sickness insurance*" are interchangeable without deviation of meaning with the words "*policy of accident and health insurance*" or the words "*policy of accident or health insurance.*" This chapter applies to all individual policies of such accident and sickness insurance written by Iowa or non-Iowa companies or associations duly licensed under chapter 508, 515, or 520 and, societies, orders, or associations licensed under chapter 512 writing sickness and accident policies providing benefits for loss of time.

89 Acts, ch 83, §72, 73 SF 112  
 Unnumbered paragraph 1 amended  
 Unnumbered paragraph 2 stricken

## CHAPTER 514B

### HEALTH MAINTENANCE ORGANIZATIONS

#### 514B.1 Definitions—services required or available.

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

1. "*Commissioner*" means the commissioner of insurance.
2. "*Health care services*" means services included in the furnishing to any individual of medical or dental care, or hospitalization, or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of all other services for the purposes of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

The health care services available to enrollees under prepaid group plans covering vision care services or procedures, shall include a provision for payment of necessary medical or surgical care and treatment provided by an optometrist licensed under chapter 154, if performed within the scope of the optometrist's license, and the plan would pay for the care and treatment when the care and treatment were provided by a person engaged in the practice of medicine or surgery as licensed under chapter 148 or 150A. The plan shall provide that the plan enrollees may reject the coverage for services which may be provided by an optometrist if the coverage is rejected for all providers of similar vision care services as licensed under chapter 148, 150A, or 154. This paragraph applies to services provided under plans made after July 1, 1983, and to existing group plans on their next anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This paragraph does not apply to enrollees eligible for coverage under Title XVIII of the Social Security Act or any other similar coverage under a state or federal government plan.

The health care services available to enrollees under prepaid group plans covering hospital, medical, or surgical expenses, may include, at the option of the employer purchaser, a provision for payment for diabetic outpatient self-management education programs, under terms and conditions agreed upon between the provider and the health maintenance organization, subject to utilization controls. This paragraph applies to services provided under plans made after July 1, 1984, and to existing group plans on their next anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This paragraph does not apply to enrollees eligible for coverage under Title XVIII of the Social Security Act or any other similar coverage under a state or federal government plan. Coverage shall apply only to programs directed and supervised by a physician who is under contract with or employed by a health maintenance organization and is licensed under chapter 148 or 150A. Covered diabetic outpatient self-management education programs shall be provided by health care professionals including, but not limited to, physicians, registered nurses, and licensed pharmacists who are knowledgeable about the disease

process of diabetes and the treatment of diabetic patients. As used in this paragraph, "diabetic outpatient self-management education programs" means instruction which will enable diabetic patients and their families to gain an understanding of the diabetic disease process and the daily management of diabetic therapy thereby avoiding frequent hospitalizations and complications. Such programs shall meet standards developed by the Iowa department of public health in consultation with American diabetes association, Iowa affiliate, for certification of outpatient diabetes education programs. This paragraph does not require the coverage for programs whose sole or primary purpose is weight reduction.

The health care services available to enrollees under prepaid group plans covering diagnosis and treatment of human ailments, shall include a provision for payment of necessary diagnosis or treatment provided by a chiropractor licensed under chapter 151 if the diagnosis or treatment is provided within the scope of the chiropractor's license and if the plan would pay or reimburse for the diagnosis or treatment of human ailment, irrespective of and disregarding variances in terminology employed by the various licensed professions in describing the human ailment or its diagnosis or its treatment, if it were provided by a person licensed under chapter 148, 150, or 150A. The plan shall also provide that the plan enrollees may reject the coverage for diagnosis or treatment of a human ailment by a chiropractor if the coverage is rejected for all providers of diagnosis or treatment for similar human ailments licensed under chapter 148, 150, 150A, or 151. A prepaid group plan of health care services may limit or make optional the payment or reimbursement for lawful diagnostic or treatment service by all licensees under chapters 148, 150, 150A, and 151 on any rational basis which is not solely related to the license under or the practices authorized by chapter 151 or is not dependent upon a method of classification, categorization, or description based upon differences in terminology used by different licensees in describing human ailments or their diagnosis or treatment. This paragraph applies to services provided under plans made after July 1, 1986, and to existing group plans on their next anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This paragraph does not apply to enrollees eligible for coverage under Title XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

The health care services available to enrollees under prepaid group plans covering hospital, medical, or surgical expenses, may include, at the option of the employer purchaser, a provision for payment of covered services determined to be medically necessary provided by a certified registered nurse certified by a national certifying organization, which organization shall be identified by the Iowa board of nursing pursuant to rules adopted by the board, if the services are within the practice of the profession of a registered nurse as that practice is defined in section 152.1, under terms and conditions agreed upon between the employer purchaser and the health maintenance organization, subject to utilization controls. This paragraph shall not require payment for nursing services provided by a certified registered nurse practicing in a hospital, nursing facility, health care institution, a physician's office, or other noninstitutional setting if the certified registered nurse is an employee of the hospital, nursing facility, health care institution, physician, or other health care facility or health care provider. This paragraph applies to services provided under plans within this state made on or after July 1, 1989, and to existing group plans on their next anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is later. This paragraph does not apply to enrollees eligible for coverage under an individual contract or coverage designed only for issuance to enrollees eligible for coverage under Title XVIII of the federal Social Security Act, or under coverage which is rated on a community basis, or any other similar coverage under a state or federal government plan.

3. "Health maintenance organization" means any person, who:
  - a. Provides either directly or through arrangements with others, health care services to enrollees on a fixed prepayment basis;
  - b. Provides either directly or through arrangements with other persons for basic health care services; and,
  - c. Is responsible for the availability, accessibility and quality of the health care services provided or arranged.
4. "Enrollee" means an individual who is enrolled in a health maintenance organization.
5. "Provider" means any physician, hospital, or person as defined in chapter 4 which is licensed or otherwise authorized in this state to furnish health care services.
6. "Basic health care services" means services which an enrollee might reasonably require in order to be maintained in good health, including as a minimum, emergency care, inpatient hospital and physician care, and outpatient medical services rendered within or outside of a hospital.
7. "Evidence of coverage" means any certificate, agreement or contract issued to an enrollee setting out the coverage to which the enrollee is entitled.

89 Acts, ch 164, §5 HF 729

Subsection 2, NEW unnumbered paragraph 5, at end of subsection

## CHAPTER 514C

### SPECIAL HEALTH AND ACCIDENT INSURANCE COVERAGES

#### 514C.4 Mandated coverage for mammography.

1. A policy or contract providing for third-party payment or prepayment of health or medical expenses shall provide minimum mammography examination coverage, including, but not limited to, the following classes of third-party payment provider contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after July 1, 1989:

- a. Individual or group accident and sickness insurance providing coverage on an expense-incurred basis.
- b. An individual or group hospital or medical service contract issued pursuant to chapter 509, 514, or 514A.
- c. An individual or group health maintenance organization contract regulated under chapter 514B.
- d. An individual or group Medicare supplemental policy.

A long-term care policy or contract is specifically excluded from regulation under this section.

2. As used in this section, "minimum mammography examination coverage" means benefits which are better than or equal to the following minimum requirements:

- a. One baseline mammogram for any woman who is thirty-five through thirty-nine years of age.
- b. A mammogram every two years for any woman who is forty through forty-nine years of age, or more frequently if recommended by the woman's physician.
- c. A mammogram every year for any woman who is fifty years of age or older.

3. Mammogram benefits may be subject to any policy or contract provisions which apply generally to other services covered by the policy or contract.

4. As used in this section:

- a. "Medicare" means the Health Insurance for the Aged Act, Title XVIII of the federal Social Security Amendments of 1965, as amended (Title I, Part I of Pub. L. No. 89-97).

b. "*Medicare supplemental policy*" means any individual or group accident and sickness insurance policy or certificate or individual subscriber contract delivered or issued for delivery to any resident of the state who is eligible for Medicare, except any long-term care insurance policy as defined in section 514G.4.

5. The commissioner of insurance shall adopt rules under chapter 17A necessary to implement this section no later than July 1, 1989.

89 Acts, ch 289, §1 HF 199  
NEW section

## CHAPTER 514E

### IOWA COMPREHENSIVE HEALTH INSURANCE ASSOCIATION

#### 514E.1 Definitions.

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

1. "*Association*" means the Iowa comprehensive health association established by section 514E.2.

2. "*Association policy*" means an individual or group policy issued by the association that provides the coverage specified in section 514E.4.

3. "*Carrier*" means an insurer providing accident and sickness insurance under chapter 509, 514 or 514A and includes a health maintenance organization established under chapter 514B if payments received by the health maintenance organization are considered premiums pursuant to section 514B.31 and are taxed under chapter 432. "*Carrier*" also includes a corporation which becomes a mutual insurer pursuant to section 514.23 and any other person as defined in section 4.1, subsection 13, who is or may become liable for the tax imposed by chapter 432.

4. "*Commissioner*" means the commissioner of insurance.

5. "*Eligible expenses*" means the usual, customary and reasonable charges for the health care services specified in section 514E.4.

6. "*Health care facility*" means a health care facility as defined in section 135C.1, subsection 4, a hospital as defined in section 135B.1, subsection 1, or a community mental health center established under chapter 230A.

7. "*Health care services*" means services, the coverage of which is authorized under chapter 509, chapter 514, chapter 514A, or chapter 514B as limited by sections 514E.4 and 514E.5, and includes services for the purposes of preventing, alleviating, curing, or healing human illness, injury or physical disability.

8. "*Health insurance*" means accident and sickness insurance authorized by chapter 509, 514 or 514A.

9. "*Health insurance trust fund*" means the fund created in section 514E.3.

10. "*Insured*" means an individual who is provided qualified comprehensive health insurance under an association policy, which policy may include dependents and other covered persons.

11. "*Medicaid*" means the federal-state assistance program established under Title XIX of the federal Social Security Act.

12. "*Medicare*" means the federal government health insurance program established under Title XVIII of the Social Security Act.

13. "*Policy*" means a contract, policy, or plan of health insurance.

14. "*Policy year*" means a consecutive twelve-month period during which a policy provides or obligates the carrier to provide health insurance.

89 Acts, ch 304, §1003 SF 538  
Subsection 2 amended

#### 514E.2 Iowa comprehensive health insurance association.

1. There is established a nonprofit corporation known as the Iowa comprehensive health insurance association which shall assure that health insurance, as

limited by sections 514E.4 and 514E.5, is made available to each eligible Iowa resident applying to the association for coverage. All carriers as defined in section 514E.1, subsection 3, providing health insurance or health care services in Iowa shall be members of the association. The association shall operate under a plan of operation established and approved under subsection 3 and shall exercise its powers through a board of directors established under this section.

2. The board of directors of the association shall consist of four members selected by the members of the association, two of whom shall be representatives from corporations operating pursuant to chapter 514 on July 1, 1989, or any successors in interest, and two of whom shall be representatives of insurers providing coverage pursuant to chapter 509 or 514A; four public members selected by the governor; the commissioner or the commissioner's designee from the division of insurance; and two members of the general assembly, one of whom shall be appointed by the speaker of the house and one of whom shall be appointed by the senate majority leader, who shall be ex officio and nonvoting members. The composition of the board of directors shall be in compliance with sections 69.16 and 69.16A. The governor's appointees shall be chosen from a broad cross-section of the residents of this state.

Members of the board may be reimbursed from the moneys of the association for expenses incurred by them as members, but shall not be otherwise compensated by the association for their services.

3. The association shall submit to the commissioner a plan of operation for the association and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation becomes effective upon approval in writing by the commissioner prior to the date on which the coverage under this chapter must be made available. After notice and hearing, the commissioner shall approve the plan of operation if the plan is determined to be suitable to assure the fair, reasonable, and equitable administration of the association, and provides for the sharing of association losses, if any, on an equitable and proportionate basis among the member carriers. If the association fails to submit a suitable plan of operation within one hundred eighty days after the appointment of the board of directors, or if at any later time the association fails to submit suitable amendments to the plan, the commissioner shall adopt, pursuant to chapter 17A, rules necessary to implement this section. 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. In addition to other requirements, the plan of operation shall provide for all of the following:

- a. The handling and accounting of assets and moneys of the association.
- b. The amount and method of reimbursing members of the board.
- c. Regular times and places for meeting of the board of directors.
- d. Records to be kept of all financial transactions, and the annual fiscal reporting to the commissioner.
- e. Procedures for selecting the board of directors and submitting the selections to the commissioner for approval.

f. Establishing, in cooperation with the commissioner of insurance and the director of revenue and finance, procedures for the determination and payment to the association from the health insurance trust fund of amounts which represent the net loss for the preceding calendar year to the association. The amount of the payment shall be based upon the amount of funds deposited in the health insurance trust fund and the amount of net loss of the association. If funds deposited in the health insurance trust fund are insufficient to pay all of the losses, the director of revenue and finance shall notify the commissioner of insurance and the association of the amount of the deficiency.

*g.* The periodic advertising of the general availability of health insurance coverage from the association.

*h.* Additional provisions necessary or proper for the execution of the powers and duties of the association.

4. The plan of operation may provide that the powers and duties of the association may be delegated to a person who will perform functions similar to those of the association. A delegation under this section takes effect only upon the approval of both the board of directors and the commissioner. The commissioner shall not approve a delegation unless the protections afforded to the insured are substantially equivalent to or greater than those provided under this chapter.

5. The association has the general powers and authority enumerated by this subsection and executed in accordance with the plan of operation approved by the commissioner under subsection 3. The association has the general powers and authority granted under the laws of this state to carriers licensed to issue health insurance. In addition, 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 action necessary or proper for recovery of any assessments for, on behalf of, or against participating carriers.

*c.* Take legal action necessary to avoid the payment of improper claims against the association or the coverage provided by or through the association.

*d.* Establish or utilize a medical review committee to determine the reasonably appropriate level and extent of health care services in each instance.

*e.* Establish appropriate rates, scales of rates, rate classifications, and rating adjustments, which rates shall not be unreasonable in relation to the coverage provided and the reasonable operations expenses of the association.

*f.* Pool risks among members.

*g.* Issue association policies on an indemnity or provision of service basis providing the coverage required by this chapter.

*h.* Administer separate pools, separate accounts, or other plans or arrangements considered appropriate for separate members or groups of members.

*i.* Operate and administer any combination of plans, pools, or other mechanisms considered appropriate to best accomplish the fair and equitable operation of the association.

*j.* Appoint from among members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the association, policy and other contract design, and any other functions within the authority of the association.

*k.* Hire independent consultants as necessary.

*l.* Develop a method of advising applicants of the availability of other coverages outside the association, and shall promulgate a list of health conditions the existence of which would make an applicant eligible without demonstrating a rejection of coverage by one carrier.

*m.* Include in its policies a provision providing for subrogation rights by the association in a case in which the association pays expenses on behalf of an individual who is injured or suffers a disease under circumstances creating a liability upon another person to pay damages to the extent of the expenses paid by the association but only to the extent the damages exceed the policy deductible and coinsurance amounts paid by the insured. The association may waive its subrogation rights if it determines that the exercise of the rights would be impractical, uneconomical, or would work a hardship on the insured.

6. Rates for coverages issued by the association shall not be unreasonable in relation to the benefits provided, the risk experience, and the reasonable expenses of providing coverage. Separate scales of rates based on age may apply for individual risks. Rates must take into consideration the extra morbidity and administration expenses, if any, for risks insured in the association. The rates for

a given classification shall not be more than one hundred fifty percent of the average premium or payment rate for that classification charged by the five carriers with the largest health insurance premium or payment volume in the state during the preceding calendar year. In determining the average rate of the five largest carriers, the rates or payments charged by the carriers shall be actuarially adjusted to determine the rate or payment that would have been charged for benefits similar to those issued by the association.

7. Following the close of each calendar year, the association shall determine the net premiums and payments, the expenses of administration, and the incurred losses of the association for the year. The association shall certify the amount of any net loss for the preceding calendar year to the commissioner of insurance and director of revenue and finance who shall make payment to the association according to procedures established under subsection 3, paragraph "f". Any remaining loss, after payment to the association from the health insurance trust fund, shall be assessed by the association to all members in proportion to their respective shares of total health insurance premiums or payments for subscriber contracts received in Iowa during the second preceding calendar year, or with paid losses in the year, coinciding with or ending during the calendar year or on any other equitable basis as provided in the plan of operation. In sharing losses, the association may abate or defer in any part the assessment of a member, if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. The association may also provide for an initial or interim assessment against members of the association if necessary to assure the financial capability of the association to meet the incurred or estimated claims expenses or operating expenses of the association until the next calendar year is completed. Net gains, if any, must be held at interest to offset future losses or allocated to reduce future premiums.

8. The association shall conduct periodic audits to assure the general accuracy of the financial data submitted to the association, and the association shall have an annual audit of its operations, made by an independent certified public accountant.

9. The association is subject to examination by the commissioner of insurance. Not later than April 30 of each year, the board of directors shall submit to the commissioner a financial report for the preceding calendar year in a form approved by the commissioner.

10. The association is subject to oversight by the legislative fiscal committee of the legislative council. Not later than April 30 of each year, the board of directors shall submit to the legislative fiscal committee a financial report for the preceding year in a form approved by the committee.

11. All policy forms issued by the association must be filed with and approved by the commissioner before their use.

12. The association shall not issue an association policy to an individual who, on the effective date of the coverage applied for, has not been rejected for, already has, or will have coverage similar to an association policy, as an insured or covered dependent.

13. The association is exempt from payment of all fees and all taxes levied by this state or any of its political subdivisions.

14. A member who, after July 1, 1986, has paid one or more assessments levied under this chapter may take a credit against the premium taxes, or similar taxes, upon revenues or income of the member that are imposed by the state on health insurance premiums pursuant to chapter 432 or payments subject to taxation under section 514B.31, up to the amount of twenty percent of those taxes due, for each of the five calendar years following the year for which an assessment was paid, or until the aggregate of those assessments has been offset by credits against those taxes if this occurs first. If a member ceases doing business, all uncredited

assessments may be credited against its premium tax liability for the year it ceases doing business.

89 Acts, ch 304, §1004-1006 SF 538

Subsection 2 amended

NEW subsection 10 and former subsections 10 and 11 renumbered as 11 and 12

Former subsection 12 stricken

### 514E.5 Expenses excluded.

Eligible expenses shall not include an expense for any of the following:

1. Services for which a charge is not made in the absence of insurance or for which there is no legal obligation on the part of a patient to pay.

2. Services and charges made for benefits provided under the laws of the United States, including Medicare and Medicaid, military service-connected disabilities, medical services provided for members of the armed forces and their dependents or for employees of the armed forces of the United States, and medical services financed on behalf of all citizens by the United States.

However, the association policy shall pay benefits as a primary payer in any case where benefit coverage provided under the laws of the United States, including Medicare and Medicaid, or under the laws of this state is, by rule or statute, secondary to all other coverages.

3. Benefits which would duplicate the provision of services or payment of charges for any care for an injury, disease, or condition for which either of the following applies:

a. It arises out of and in the course of an employment subject to a workers' compensation or similar law.

b. Benefits for it are payable without regard to fault under a coverage required to be contained in any motor vehicle or other liability insurance policy or equivalent self-insurance. However, this does not authorize exclusion of charges that exceed the benefits payable under the applicable workers' compensation or no-fault coverage.

4. Care which is primarily for a custodial or domiciliary purpose.

5. Cosmetic surgery unless provided as the result of an injury or medically necessary surgical procedure.

6. Services the provision of which is not within the scope of the license or certificate of the institution or individual rendering the services.

7. That part of any charge for services or articles rendered or prescribed by a health care provider which exceeds the prevailing charge in the locality where the service is provided, or a charge for services or articles not medically necessary.

8. Services rendered prior to the effective date of coverage under this plan for the person on whose behalf the expense is incurred.

9. Routine physical examinations including examinations to determine the need for eye glasses and hearing aids.

10. Illness or injury due to an act of war.

11. Service of a blood donor and any fee for failure to replace the first three pints of blood provided to an eligible person each calendar year.

12. Personal supplies or services provided by a health care facility or any other nonmedical or nonprescribed supply or service.

13. Experimental services or supplies. "Experimental" means a service or supply not recognized by the appropriate medical board as normal mode of treatment for the illness or injury involved.

14. Eye surgery if corrective lenses would alleviate the problem.

The coverage and benefit requirements of this section for association policies shall not be altered by any other state law without specific reference to this chapter indicating a legislative intent to add or delete from the coverage requirements of this chapter.

This chapter does not prohibit the association from issuing additional types of health insurance policies with different types of benefits which, in the opinion of the board of directors, may be of benefit to the citizens of the state.

89 Acts, ch 321, §36 HF 779  
Subsection 2, NEW unnumbered paragraph 2

## CHAPTER 514F

### UTILIZATION AND COST CONTROL

#### 514F.1 Utilization and cost control review committees.

The boards of examiners under chapters 148, 149, 150, 150A, 151, 152, 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, 149, 150, 150A, 151, 152, 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.

89 Acts, ch 164, §6 HF 729  
Section amended

## CHAPTER 514G

### LONG-TERM CARE INSURANCE

#### 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.

c. Provide coverage for skilled nursing care only, or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care.

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 hospitalization—institutionalization.*

a. Effective July 1, 1989, a long-term care insurance policy shall not be delivered or issued for delivery in this state if the policy does either of the following:

(1) Conditions eligibility for any benefits on a requirement of prior hospitalization.

(2) Conditions eligibility for benefits covering care provided in an institutional care setting on the receipt of a higher level of institutional care.

b. Effective July 1, 1989, a long-term care insurance policy containing any limitations or conditions for eligibility, other than those prohibited in paragraph 1, shall clearly label such limitations or conditions in a separate paragraph of the policy or certificate entitled "*Limitations or Conditions on Eligibility for Benefits*".

c. A long-term care insurance policy advertised, marketed, or offered as containing long-term care benefits at home shall not condition receipt of benefits on a requirement of prior hospitalization.

d. A long-term care insurance policy which conditions eligibility for noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty days for which benefits are paid.

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. 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. Continuation or conversion provisions of group coverage shall be specifically described.

d. A statement that the outline of coverage is a summary of the policy issued or applied for, not a contract of insurance, and that the policy or group master policy should be consulted to determine governing contractual provisions.

e. A description of the terms by which the policy or certificate may be returned and premium refunded.

f. A description of the cost of care and benefits.

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.

89 Acts, ch 321, §37-39 HF 779  
Subsection 2, NEW paragraph c  
Subsection 4 stricken and rewritten  
Subsection 7 amended

## CHAPTER 515

### INSURANCE OTHER THAN LIFE

#### 515.1 Applicability.

Corporations formed for the purpose of insurance, other than life insurance, shall be governed by the provisions of chapter 490, chapter 491, or chapter 504A, except as modified by the provisions of this chapter.

89 Acts, ch 288, §192 SF 502  
1989 amendment effective December 31, 1989; 89 Acts, ch 288, §196 SF 502  
Section amended

### **515.99 Foreign companies may become domestic.**

An insurer which is organized under the laws of any state, and is admitted to do business in this state for the purpose of writing insurance authorized by this chapter may become a domestic insurer by complying with section 490.902 or 491.33 and with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business in this state, and, upon payment to the commissioner of insurance of a transfer tax in a sum equal to twenty-five percent of the premium tax paid pursuant to the provisions of chapter 432 for the last calendar year immediately preceding its becoming a domestic corporation or the sum of ten thousand dollars, whichever is the lesser but not less than one thousand dollars, may become a domestic corporation and be entitled to like certificates of its corporate existence and license to transact business in this state, and be subject in all respects to the authority and jurisdiction thereof.

The certificates of authority, agent's appointments and licenses, rates, and other items which are in existence at the time any insurer transfers its corporate domicile to this state, pursuant to this section, shall continue in full force and effect upon such transfer. For purposes of existing authorizations and all other corporate purposes, the insurer is deemed the same entity as it was prior to the transfer of its domicile. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to any new name of the company or its new location unless so ordered by the commissioner of insurance.

89 Acts, ch 288, §193 SF 502

1989 amendments effective December 31, 1989; 89 Acts, ch 288, §196 SF 502

Section stricken and rewritten

### **515.150 Demolition reserve on fire and casualty claims on property.**

1. An insurer shall reserve five thousand dollars or ten percent, whichever amount is greater, of the payment for damages to the property excluding personal property on which it has issued a fire and casualty insurance policy as demolition cost reserve if the following are applicable:

- a. The property is located within the corporate limits of a city.
- b. The damage to the property renders it uninhabitable or unfit for the purpose for which it was intended, without repair.
- c. Proof of loss has been submitted by the policyholder for a sum in excess of seventy-five percent of the face value of the policy covering the building or other insured structure.

2. An insurer which has received a proof of loss in excess of seventy-five percent of the face value of the policy covering a building or other insured structure, shall notify the city council of the city within which the property is located. The notice shall be made by certified mail within five working days after receipt of the proof of loss.

3. The city shall release all interest in the demolition cost reserve within ninety days after receiving notice of the existence of the demolition cost reserve unless the city has instituted legal proceedings for the demolition of said building or other insured structure, and has notified the insurer in writing of the institution of such legal proceedings. Failure of the city to notify the insurer of such legal proceedings shall terminate the city's claim to any proceeds from the reserve.

4. A reserve for demolition costs shall no longer be required if:

a. The insurer has received notice from both the insured and the city council that the insured has commenced repairs to the property or has commenced demolition of the property.

b. The city has failed to notify the insurer as provided under subsection 3.

5. If the city is required to demolish the damaged property at city expense, after instituting legal proceedings, emergency actions, or obtaining waivers for

the demolition of the building or other insured structure, the city shall present to the insurer the actual cost of demolition of the property, including engineering, legal, and other demolition project costs, and the insurer shall compensate the city for that actual cost of the demolition project up to the amount in the demolition cost reserve. Any amount left from the demolition cost reserve after the cost of demolition of the property is paid to the city shall be paid to the insured if the insured is entitled to the remaining proceeds under the policy.

6. The insurer is not liable for any amount in excess of the limits of liability set out by the policy.

7. Insurers complying with this section or attempting in good faith to comply with this section shall be immune from civil and criminal liability.

89 Acts, ch 16, §1 SF 158  
Subsection 1, paragraph a amended

## CHAPTER 515B

### INSURANCE GUARANTY ASSOCIATION

#### 515B.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. "*Association*" means the Iowa insurance guaranty association created pursuant to section 515B.3.

2. "*Commissioner*" means the commissioner of insurance of this state.

3. "*Covered claim*" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if such insurer becomes an insolvent insurer after July 1, 1970, and one of the following conditions exists:

a. The claimant or insured is a resident of this state at the time of the insured event. Other than an individual, the residence of the claimant or insured is the state in which its principal place of business is located.

b. The claim is one by an insured for damage to property permanently located in this state.

"*Covered claim*" does not include an amount due any reinsurer, insurer, insurance pool, underwriting association, or other group assuming insurance risks, as subrogation, contribution, or indemnity recoveries or otherwise; a portion of a claim that is within an insured's deductible or self-insured retention; a claim for unearned premium calculated on a retrospective basis, experience-rated plan, or premium subject to adjustment after termination of the policy; an amount due an attorney, adjuster, or witness as fees for services rendered to the insolvent insurer; a fine, penalty, interest, or punitive or exemplary damages; or a claim under a policy issued by an insolvent insurer with a deductible or self-insured retention of two hundred thousand dollars or more. A claim under a liability policy shall be considered to be a covered claim if as of the deadline set for the filing of claims against the insolvent insurer or its liquidator, the insured is a debtor in a liquidation bankruptcy under 11 U.S.C. §701 et seq. This paragraph does not prevent a person from presenting a noncovered claim to the insolvent insurer or its liquidator, but the noncovered claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that it is outside the coverage of the policy issued by the insolvent insurer.

4. "*Insurer*" means an insurer licensed to transact insurance business in this state under either chapter 515 or chapter 520, either at the time the policy was issued or when the insured event occurred. It does not include county or state mutual assessment associations licensed under chapter 518 or chapter 518A, or

fraternal beneficiary societies, orders, or associations licensed under chapter 512, or corporations operating nonprofit service plans under chapter 514, or life insurance companies or life, accident, or health associations licensed under chapter 508, or those professions under chapter 519.

5. "*Insolvent insurer*" means an insurer against which a final order of liquidation with a finding of insolvency has been entered on or after July 1, 1980, by a court of competent jurisdiction of this state or of the state of the insurer's domicile.

6. "*Net direct written premiums*" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums and dividends paid or credited to policyholders on such direct business. Such term does not include premiums on contracts between insurers or reinsurers.

7. "*Person*" means any individual, corporation, partnership, association, or voluntary organization.

89 Acts, ch 83, §74 SF 112  
Subsection 4 amended

### 515B.12 Tax exemption.

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 property.

89 Acts, ch 296, §73 SF 141  
Section amended

## CHAPTER 521

### CONSOLIDATION AND REINSURANCE

#### 521.1 Definitions.

"*Company*" or "*companies*" when used in this chapter means a company or association organized under chapter 508, 511, 515, 518A, or 520, except county mutuals.

89 Acts, ch 83, §75 SF 112  
Section amended

## CHAPTER 523A

### SALES OF FUNERAL SERVICES AND MERCHANDISE

#### 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, or in a trust company authorized to conduct business in this state, 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.

89 Acts, ch 257, §1 HF 234  
Subsection 1, paragraph a amended

## CHAPTER 523D

### RETIREMENT FACILITIES

#### 523D.1 Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

1. *"Continuing care"* means the furnishing to residents, the majority of whom are sixty years of age or older, other than a resident related by consanguinity or affinity to the person furnishing the care, of senior adult congregate living services together with nursing services regardless of whether or not the services are provided at one location and pursuant to one or more agreements effective for the life of the resident or for a period of time greater than one year.

2. *"Continuing care retirement community"* means a senior adult congregate living facility which furnishes senior adult congregate living services together with nursing services to residents, regardless of whether or not the services are provided at one location, and pursuant to one or more agreements effective for the life of the resident or for a period of time greater than one year.

3. *"Entrance fee"* means an initial or deferred transfer, which exceeds the lesser amount of five thousand dollars or six times the living unit's monthly fee, to a provider of a sum of money or other property made or promised to be made as full or partial consideration for acceptance of a specified individual as a resident in a facility.

4. *“Facility”* means a senior adult congregate living facility or a continuing care retirement community.

5. *“Living unit”* means a room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one or more identified residents.

6. *“Provider”* means a person undertaking to provide care in a senior adult congregate living facility or continuing care facility.

7. *“Resident”* means an individual, sixty years of age or older, entitled to receive care in a senior adult congregate living facility or continuing care facility.

8. *“Senior adult congregate living facility”* means any building or buildings, section of a building, or distinct part of a building, residence, private home, boarding home, home for the aged, or other place, other than facilities licensed and operated under chapter 135C, or community supervised living arrangements approved by the department of human services under section 225C.21, whether operated by a for-profit or a not-for-profit organization which undertakes through its ownership or management to provide housing and one or more supportive services for a time period exceeding twenty-four consecutive hours, to ten or more residents, the majority of whom are sixty years of age or older. A person who is furnishing the continuing care and who is related by consanguinity or affinity to the resident living in the facility shall not be included in the capacity calculation.

9. *“Senior adult congregate living services”* means the services provided to residents in a facility.

10. *“Supportive services”* includes, but is not limited to, services such as laundry; maintenance; emergency nursing care; activity services; security; dining options; transportation; beauty and barber; personal, including eating, bathing, dressing, and supervised medication administration; and health.

89 Acts, ch 217, §1 SF 278  
NEW section

### **523D.2 Filing with division of insurance.**

A person shall not, as a provider, enter into a contract to provide continuing care or senior adult congregate living services in a facility, or extend the term of an existing contract to provide continuing care or senior adult congregate living services in a facility, if the contract requires or permits the payment of an entrance fee to any person, and the facility is or will be located in this state, or the provider or a person acting on the provider's behalf solicits the contract within this state for a facility located in this state and the person to be provided with continuing care or senior adult congregate living services under the contract resides within this state at the time of the solicitation, unless the person has filed with the division of insurance of the department of commerce, a current disclosure statement which meets the requirements of section 523D.3. The disclosure statement shall be accompanied by a one hundred dollar filing fee as a condition of filing and compliance with this section.

89 Acts, ch 217, §2 SF 278  
NEW section

### **523D.3 Disclosure statement.**

1. At the time of or prior to the execution of a contract to provide continuing care or senior adult congregate living services, or at the time of or prior to the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever occurs first, the provider shall deliver a disclosure statement to the person, and to the person's personal representative if one is appointed, with whom the contract is to be entered into, which shall contain all of the following information unless such information is in the contract, a copy of which must be attached to the statement:

a. The name and business address of the provider and a statement of whether the provider is a partnership, corporation, or other type of legal entity.

b. The names and business addresses of the officers, directors, trustees, managing or general partners, and any person having a ten percent or greater equity or beneficial interest in or of the provider and a description of such person's interest in or occupation with the provider.

c. With respect to each person covered by paragraph "b", and if the facility will be managed on a day-to-day basis by a person other than a person directly employed by the provider, a person named in response to paragraph "b", or the proposed manager:

(1) A description of the business experience of the person, if any, in the operation or management of similar facilities.

(2) The name and address of any professional service, firm, association, trust, partnership, or corporation in which the person has, or which has in the person, a ten percent or greater interest and which will or may provide goods, leases, or services to the facility of a value of five hundred dollars or more, within a year, including a description of the goods, leases, or services and their probable or anticipated cost to the facility or provider.

(3) A description of any matter in which the person has been convicted of a felony or pleaded nolo contendere to a felony charge or been held liable or enjoined in a civil action by final judgment if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property or similar felonies involving theft or dishonesty.

(4) A description of any matter in which the person is subject to a currently effective injunctive or restrictive order of a court of record, or within the past five years had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or the division of insurance, arising out of or relating to business activity or health care, including, without limitation, actions affecting a license to operate a foster care facility, health care facility, retirement home, home for the aged, or facility licensed under this chapter or a similar law of another state.

d. A statement as to:

(1) Whether the provider is or ever has been affiliated with a for-profit organization or with a religious, charitable, or other nonprofit organization.

(2) The nature of the affiliation, if any.

(3) The extent to which the affiliate organization will be responsible for the financial and contractual obligations of the provider.

(4) The provision of the federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of federal income tax.

e. The location and description of the physical property or properties of the facility, existing or proposed, and, to the extent proposed, the estimated completion date or dates, whether or not construction has begun, and the contingencies subject to which construction may be deferred.

f. The services provided or proposed to be provided under contracts for continuing care at the facility, including the extent to which medical care is furnished. The disclosure statement shall clearly state which services are included in basic contracts for continuing care and which services are made available at or by the facility at extra charge.

g. A description of all fees required of residents, including the entrance fee and periodic charges, if any. The description shall include the manner by which the provider may adjust periodic charges or other recurring fees and the limitations on such adjustments, if any.

h. The provisions which have been made or will be made, if any, to provide reserve funding or security to enable the provider to fully perform its obligations under contracts to provide continuing care or senior adult congregate living services at the facility, including the establishment of escrow accounts, trusts, or

reserve funds, together with the manner in which the funds will be invested and the names and experience of persons who will make the investment decisions.

*i.* Certified financial statements of the provider, for all parts of an operation covered by the contract, including the health center or nursing home portion of the continuing care retirement community, if those services are included in the contract, but the disclosure statement may exclude services or operations not provided to residents as senior adult congregate living services under their contract, including:

- (1) A balance sheet as of the end of the two most recent fiscal years.
- (2) Income statements of the provider for the two most recent fiscal years or the shorter period of time in which the provider has been in existence.

*j.* If operation of the facility has not yet commenced, a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility, including:

- (1) An estimate of the cost of purchasing or constructing and equipping the facility, including related costs such as financing expense, legal expense, land costs, occupancy development costs, and all other similar costs which the provider expects to incur or become obligated for prior to the commencement of operations.
- (2) A description of any mortgage loan or other long-term financing intended to be used for the financing of the facility, including the anticipated terms and costs of the financing.

(3) An estimate of the total entrance fees to be received from or on behalf of residents at or prior to commencement of operation of the facility.

(4) An estimate of the funds, if any, which are anticipated to be necessary to fund start-up losses and provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care or senior adult congregate living services.

(5) A projection of estimated income from fees and charges other than entrance fees, showing individual rates presently anticipated to be charged and including a description of the assumptions used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies for health care services, if any, to be provided pursuant to the contracts for continuing care or senior adult congregate living services.

(6) A projection of estimated operating expenses of the facility, including a description of the assumptions used in calculating the expenses and separate allowances, if any, for the replacement of equipment and furnishings and anticipated major structural repairs or additions.

(7) Identification of any assets pledged as collateral for any purpose.

(8) An estimate of annual payments of principal and interest required by any mortgage loan or other long-term financing.

*k.* Other material information, which may include an independent analysis of the actuarial soundness of the financial plan, concerning the facility or the provider as required by the division of insurance or as the provider wishes to include.

*l.* The cover page of the disclosure statement shall state, in a prominent location and type face, the date of the disclosure statement.

*m.* A copy of the standard form or forms of contract for continuing care or senior adult congregate living services used by the provider, attached as an exhibit to each disclosure statement.

2. The provider shall file with the division of insurance, annually within five months following the end of the provider's fiscal year, an annual disclosure statement which shall contain the information required by this chapter for the initial disclosure statement. The annual disclosure statement shall also be accompanied by a narrative describing:

a. Any material differences between the pro forma income statement filed pursuant to this chapter either as part of the most recent annual disclosure statement and the actual results of operations during the fiscal year, if the material differences substantially affect the financial safety or soundness of the community.

b. Any material differences between the pro forma balance sheet and the actual results of operations during the fiscal year.

The annual disclosure statement shall also contain a revised pro forma income statement for the next fiscal year.

3. From the date an annual disclosure statement is filed until the date the next succeeding annual disclosure statement is filed with the division of insurance and prior to the provider's acceptance of part or all of any application fee or part of the entrance fee or the execution of the continuing care or senior adult congregate living services contract by the resident, whichever occurs first, the provider shall deliver the current annual disclosure statement to the current or prospective residents with whom the continuing care or senior adult congregate living services contract is or may be entered into and to a resident's or prospective resident's personal representative if one is appointed.

4. In addition to filing the annual disclosure statement, the provider may amend its currently filed disclosure statement at any other time if, in the opinion of the provider, an amendment is necessary to prevent the disclosure statement and annual disclosure statement from containing any material misstatement of fact or omission to state a material fact required to be included in the statement. The amendment or amended disclosure statement shall be filed with the division of insurance before the statement is delivered to a resident or prospective resident and a personal representative of a resident or prospective resident and is subject to all the requirements, including those as to content and delivery, of this chapter.

89 Acts, ch 217, §3 SF 278  
NEW section

#### **523D.4 False information.**

1. A provider 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 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 of any sort containing any assertion, representation, or statement which is untrue, deceptive, or misleading.

2. A provider shall not file with the division of insurance or make, publish, disseminate, circulate, or deliver to any person or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or delivered to any person or placed before the public, a financial statement which does not meet generally accepted accounting principles.

89 Acts, ch 217, §4 SF 278  
NEW section

#### **523D.5 Entrance fee escrow for new construction.**

The provider shall establish an interest-bearing escrow account with a state or federally regulated financial institution for a living unit which has not previously been occupied by a resident for which an entry fee arrangement is used. The escrow account agreement shall be entered into between the financial institution and the provider with the financial institution as the escrow agent and as a fiduciary for the resident or the prospective resident, the agreement shall state that its purpose is to protect the resident or the prospective resident, and the funds deposited in the account shall be kept and maintained in an account

separate and apart from the provider's business accounts. These funds may be released only as follows:

1. If the entrance fee applies to a living unit which has not previously been occupied by a resident, the entrance fee shall be released to the provider only when the escrow agent reasonably determines that the following conditions have been satisfied:

a. The facility has a minimum of fifty percent of the units reserved for which the provider is charging an entrance fee.

b. The aggregate amount of the entrance fees received by or pledged to the provider, plus anticipated proceeds from any long-term financing commitment, plus funds from all other sources in the actual possession of the provider, equal not less than ninety percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility.

2. Upon receipt by the escrow agent of a request by the provider for the release of these escrow funds, the escrow agent shall approve release of the funds within five working days unless the escrow agent finds that the requirements of subsection 1 have not been met and notifies the provider of the basis for this finding. The request for release of the escrow funds shall be accompanied by any documentation the fiduciary requires.

3. If the provider fails to meet the requirements for release of funds held in this escrow account within a time period the escrow agent considers reasonable, these funds shall be returned by the escrow agent to the persons who have made payment to the provider. The escrow agent shall notify the provider of the length of this time period when the provider requests release of the funds.

4. An entrance fee held in escrow shall be returned by the escrow agent to the person who made payment to the provider at any time upon receipt by the escrow agent of notice from the provider that this person is entitled to a refund of the entrance fee.

89 Acts, ch 217, §5 SF 278  
NEW section

### **523D.6 Personal representative—cancellation.**

1. A prospective resident or resident shall be provided a form to appoint a personal representative to receive copies of all notices, disclosures, or forms required by this chapter to be delivered to a prospective resident or resident. A personal representative appointed under this section shall not have legal authority to make any decision for the prospective resident or resident appointing the person to be a personal representative. The personal representative may advise the prospective resident or resident as to the materials provided. A personal representative shall not be affiliated or associated with a provider or any person identified in section 523D.3, subsection 1, paragraph "b" or "c" and shall not be a prospective resident or resident.

2. A person may cancel a contract for a period equal to the later ending period of the following:

a. Forty-five calendar days after the disclosure statement required by section 523D.3 was delivered to the person and to the person's personal representative if one is appointed.

b. Within three business days after the execution of a contract to provide continuing care or senior adult congregate living services, or at the time of the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever occurs first.

3. A provider shall furnish to each prospective resident and the prospective resident's personal representative, if one is appointed, at the time section 523D.3 requires delivery of a disclosure statement, a completed form in duplicate, captioned "Notice of Cancellation", which shall be attached to the disclosure statement and easily detachable, and which shall contain in ten point boldface

type the following information and statements in the same language as that used in the contract:

**NOTICE OF CANCELLATION**

a. Date contract was executed or money or property transferred to the provider, whichever occurs first, if known: .....

b. Date disclosure statement was delivered: .....

You may cancel this contract, without any penalty or obligation, within three business days from date in paragraph "a" above, or within forty-five calendar days of date in paragraph "b" above, whichever period ends upon a later date.

If you cancel this contract, any money or property transferred to the provider, any payments made by you will be returned within thirty calendar days following receipt by the provider of your cancellation notice, and any security interest arising out of the transaction will be canceled, except that the provider may retain the reasonable value of care and services actually provided to the resident prior to the resident vacating the provider's facility.

If you cancel this contract, and have already moved into the provider's facility, you must vacate the provider's facility within ten days after receipt by the provider of your cancellation notice.

To cancel this contract, mail by certified mail or hand deliver, a signed and dated copy of this cancellation notice or any other written notice clearly indicating your intent to cancel the contract, or send a telegram, to ..... (name of provider) at ..... (address of provider's place of business).

I hereby cancel this contract.

.....

(Date)

.....  
(prospective resident's or resident's signature)

4. A purchaser's cancellation is effective upon mailing by certified mail, when transmitted by telegraph, or when actual notice is given to the provider, whichever is earlier.

89 Acts, ch 217, §6 SF 278  
NEW section

**523D.7 Civil liability.**

1. A provider is liable to the person contracting for continuing care or senior adult congregate living services for damages and repayment of all fees paid to the provider, facility, or person violating this chapter, less the reasonable value of care and lodging provided to the resident by or on whose behalf the contract for continuing care or senior adult congregate living services was entered into prior to discovery of the violation, misstatement, or omission, or the time the violation, misstatement, or omission should reasonably have been discovered, together with interest at the legal rate for judgments and court costs and reasonable attorney fees, if the provider does any of the following:

a. Enters into a contract to provide continuing care or senior adult congregate living services at a facility without having first delivered a disclosure statement meeting the requirements of this chapter to the person contracting for continuing care or senior adult congregate living services and to the person's personal representative if one is appointed by the person.

b. Enters into a contract to provide continuing care or senior adult congregate living services at a facility with a person who has relied on a disclosure statement which contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

2. Liability under this section exists regardless of whether or not the provider or person liable had actual knowledge of the misstatement or omission.

3. A person shall not file or maintain an action under this section if the person, before filing the action, received an offer to refund, payable upon acceptance, all amounts paid the provider, facility, or person violating this chapter, together with interest from the date of payment, less the reasonable value of care and lodging provided prior to receipt of the offer, and the person failed to accept the offer within thirty days of its receipt. At the time a provider makes a written offer of refund, the provider shall file a copy with the division of insurance. The refund offer shall refer to the provisions of this section.

4. An action shall not be maintained to enforce a liability created under this chapter unless brought before the expiration of six years after the execution of the contract for continuing care or senior adult congregate living services which gave rise to the violation.

5. Except as expressly provided in this chapter, civil liability in favor of a private party shall not arise against a person, by implication, from or as a result of the violation of this chapter. This chapter does not limit a liability which may exist by virtue of any other statute or under common law if this chapter were not in effect.

89 Acts, ch 217, §7 SF 278  
NEW section

#### **523D.8 Criminal penalties.**

1. A person who willfully and knowingly violates a provision of this chapter or a rule adopted or order entered pursuant to this chapter, upon conviction, is guilty of an aggravated misdemeanor.

2. This chapter does not limit the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

89 Acts, ch 217, §8 SF 278  
NEW section

#### **523D.9 Initial filing.**

For any facility offering continuing care or senior adult congregate living services contracts prior to July 1, 1989, initial filings of disclosure statements shall take effect in and for the facility's fiscal year ending after January 1, 1990.

89 Acts, ch 217, §9 SF 278  
NEW section

#### **523D.10 Rules.**

The division of insurance may adopt rules pursuant to chapter 17A as necessary and appropriate to implement this chapter, and may make further recommendations to the general assembly for the protection of residents and prospective residents of facilities required to file an annual disclosure statement under this chapter.

89 Acts, ch 217, §10 SF 278  
NEW section

## **CHAPTER 524**

### **IOWA BANKING LAW**

#### **524.103 Definitions.**

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

1. "Account" means any account with a state bank and includes a demand, time or savings deposit account or any account for the payment of money to a state bank.

2. *"Agreement for the payment of money"* means a monetary obligation, other than an obligation in the form of an evidence of indebtedness or an investment security; including, but not limited to, amounts payable on open book accounts receivable and executory contracts and rentals payable under leases of personal property.

3. *"Articles of incorporation"* means the original or restated articles of incorporation and all amendments thereto and includes articles of merger.

4. *"Assets"* means all the property and rights of every kind of a state bank.

5. *"Bank"* means a corporation engaged in the business of banking, authorized by law to receive deposits and whose deposits are insured by the federal deposit insurance corporation.

6. *"Business of banking"* means the business generally done by banks.

7. *"Capital"* means the sum of the par value of the preferred and common shares of a state bank issued and outstanding.

8. *"Capital structure"* means the capital, surplus, and undivided profits of a state bank and shall include an amount equal to the sum of any capital notes and debentures issued and outstanding pursuant to section 524.404.

9. *"Customer"* means any person having an account with a state bank. For the purpose of this chapter, a government or governmental body or entity may be a customer.

10. *"Evidence of indebtedness"* means a note, draft or similar negotiable or nonnegotiable instrument.

11. *"Fiduciary"* means an executor, administrator, guardian, conservator, receiver, trustee or one acting in a similar capacity.

12. *"Insolvent"* means the inability of a state bank to pay its debts and obligations as they become due in the ordinary course of its business.

13. *"Insured bank"* means a state bank the deposits of which are insured in accordance with the provisions of the federal deposit insurance act.

14. *"Municipal corporation"* means an incorporated city.

15. *"Person"* means an individual, a corporation (domestic or foreign), a partnership, an association, a trust or a fiduciary.

16. *"Private bank"* means an individual, partnership or other unincorporated association engaged in the business of banking to the extent provided for and limited by sections 524.1701 and 524.1702 and which was lawfully engaged in the business of banking in this state prior to April 19, 1919.

17. *"Shareholder"* means one who is a holder of record of shares in a state bank.

18. *"Shares"* means the units into which the proprietary interests in a state bank are divided.

19. *"State bank"* means any bank incorporated pursuant to the provisions of this chapter after January 1, 1970, and any "state bank" or "savings bank" incorporated pursuant to the laws of this state and doing business as such upon January 1, 1970.

20. *"Surplus"* means the aggregate of the amount originally paid in as required by section 524.402, subsection 1, any amounts transferred to surplus pursuant to section 524.402, subsection 2, and any amounts subsequently designated as such by action of the board of directors of the state bank.

21. *"Superintendent"* means the superintendent of banking of this state.

22. *"Undivided profits"* means the accumulated undistributed net profits of a state bank, including any residue from the fund established pursuant to section 524.403, after:

a. Payment or provision for payment of taxes and expenses of operations.

b. Transfers to reserves allocated to a particular asset or class of assets.

c. Losses estimated or sustained on a particular asset or class of assets in excess of the amount of reserves allocated therefor.

d. Transfers to surplus and capital.

e. Amounts declared as dividends to shareholders.

23. "Unincorporated area" means a village within which a state bank or national bank has its principal place of business.

24. "Administrator" means the person designated in section 537.6103.

25. "Supervised financial organization" as defined and used in the Iowa consumer credit code includes a person organized pursuant to this chapter.

26. "Agricultural credit corporation" means as defined in section 535.12, subsection 4.

27. "Bankers' bank" means a bank which is organized under the laws of any state or under federal law, and whose shares are owned exclusively by other banks or by a bank holding company whose shares are owned exclusively by other banks, except for directors' qualifying shares when required by law, and which engages exclusively in providing services for depository institutions and officers, directors and employees of those depository institutions.

28. "Trust company" means a business organization which is authorized to engage in trust business pursuant to section 524.1005. A bank lawfully granted trust powers under the laws of this state or of the United States is not a trust company by reason of having authority to engage in trust business in addition to its general business.

89 Acts, ch 257, §2, 3 HF 234  
Subsection 5 amended  
NEW subsection 28

#### **524.107 Persons authorized to engage in banking business—educational bank.**

1. No person may lawfully engage in this state in the business of receiving money for deposit, transact the business of banking, or may lawfully establish in this state a place of business for such purpose, except a state bank which is subject to the provisions of this chapter, a private bank to the extent provided for and limited by sections 524.1701 and 524.1702, and a national bank authorized by the laws of the United States to engage in the business of receiving money for deposit.

2. A person doing business in this state shall not use the words "bank" or "trust" or use any derivative, plural, or compound of the words "bank", "banking", "bankers", or "trust" in any manner which would tend to create the impression that the person is authorized to engage in the business of banking or to act in a fiduciary capacity, except a state bank authorized to do so by this chapter, a national bank to the extent permitted by the laws of the United States, a state association pursuant to section 534.507, or a federal association to the extent permitted by the laws of the United States, or, insofar as the word "trust" is concerned, an individual permissibly serving as a fiduciary in this state, pursuant to section 633.63, or, insofar as the words "trust" and "bank" are concerned, a nonresident corporate fiduciary permissibly serving as a fiduciary in this state pursuant to section 633.64.

3. Notwithstanding subsections 1 and 2, an organization formed for educational purposes in association with an accredited school which engages in the receipt of deposits of no more than twenty dollars per depositor, may use the words "educational bank", the use of which is otherwise restricted in subsection 2, and such an educational bank is not a bank within the meaning or scope of regulation of this chapter.

89 Acts, ch 257, §4 HF 234; 89 Acts, ch 319, §80 HF 774  
Subsection 2 amended  
NEW subsection 3

#### **524.217 Examinations.**

1. The superintendent shall have power to make or cause to be made an examination of every state bank and trust company whenever in the superinten-

dent's judgment such examination is necessary or advisable, but in no event less frequently than once during each eighteen-month period. During the course of each examination of a state bank or trust company, inquiry shall be made as to its financial condition, the security afforded to those to whom it is obligated, the policies of its management, whether the requirements of law have been complied with in the administration of its affairs, and such other matters as the superintendent may prescribe. The superintendent shall also have power to make or cause to be made such limited examinations at such times and with such frequency as the superintendent may deem necessary and advisable to determine the condition of any state bank or trust company and whether any person has violated any of the provisions of this chapter.

2. The superintendent shall have power to make or cause to be made an examination of any corporation in which the state bank or trust company owns shares except corporations described in paragraphs "a" and "b" of subsection 3 of section 524.901. The superintendent shall also have power, upon application to and order of the district court of Polk county, to make or cause to be made an examination of any person having business transactions or a relationship with any state bank or trust company when such an examination is deemed necessary and advisable in order to determine whether the capital of the state bank or trust company is impaired or whether the safety of its deposits has been imperiled. The fee for any such examination shall be paid by the state bank or trust company.

3. To the extent necessary for the purpose of any examination provided for by this section and section 524.1105, the superintendent shall have the power to examine all relevant books, records, accounts and documents and to compel the production of the same in the manner prescribed by section 524.214.

4. The superintendent may furnish to the federal deposit insurance corporation and the federal reserve system, the office of the comptroller of the currency, federal home loan bank board, national credit union administration, and financial institution regulatory authorities of other states, or to any official or supervising examiner thereof, a copy of the report of any or all examinations made of any state bank and of any affiliate of a state bank.

5. A copy of the report of each examination of a state bank or trust company shall be transmitted by the superintendent to the board of directors of the state bank or trust company except to the extent that the report of any such examination may be confidential to the superintendent, and each member of the board of directors shall furnish to the superintendent, on forms to be supplied by the superintendent, a statement that the member has read the report of examination.

6. All reports of examinations, including any copies thereof, in the possession of any person other than the superintendent or employee of the banking division, including any state bank or any agency to which any report of such examination may be furnished under subsection 4 of this section, shall be confidential communications, shall not be subject to subpoena from such persons and shall not be published or made public by such persons.

7. The report of examination of any affiliate or of any person examined as provided for in subsection 2 shall not be transmitted by the superintendent to any such affiliate or person or to any state bank or trust company or to the board of directors of any state bank or trust company unless authorized or requested by such affiliate or person.

89 Acts, ch 257, §5 HF 234  
Subsections 1, 2, 4, 5 and 7 amended

#### **524.225 Procedures—judicial review.**

Judicial review of the actions of the superintendent may be sought in accordance with chapter 17A. However, contested case provisions of chapter 17A, the Iowa administrative procedure Act, do not apply to an action by the superintendent to

take over the management of or to manage a state bank, as authorized by sections 524.224 and 524.226.

89 Acts, ch 257, §6 HF 234  
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. At the election of the incorporators or shareholders, a provision eliminating or limiting 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 any breach of the director's duty of loyalty to the corporation or its shareholders, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, for any transaction from which the director derives an improper personal benefit, or under section 524.605, subsection 1 and 2. A provision shall not eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.
  11. The specific month in which the annual meeting of shareholders shall be held.
  12. 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.

89 Acts, ch 257, §7, 8 HF 234  
Subsection 10 amended

NEW subsection 11 and former subsection 11 renumbered as 12

### 524.814 Pledge of assets.

Pursuant to a resolution of its board of directors, a state bank may pledge its assets for the following purposes, and for no other purposes:

1. To secure deposits when a customer is required to obtain such security by the laws of the United States, by any agency or instrumentality of the United States, by the laws of the state of Iowa, by the state board of regents, by a resolution or ordinance relating to the issuance of bonds, by the terms of any interstate compact or by order of any court of competent jurisdiction.

2. To secure money borrowed by the state bank, provided that capital notes or debentures issued pursuant to section 524.404 shall not in any event be secured by a pledge of assets or otherwise.

3. To secure participations sold to the federal agricultural mortgage corporation.

89 Acts, ch 257, §9 HF 234  
NEW subsection 3

### 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 farm 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.

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 farm 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 or units of investment companies or investment trusts registered under the federal Investment Company Act of 1940, 15 U.S.C. §80a, the portfolio of which is limited to the United States obligations or Iowa general obligations described in subsection 1 or repurchase agreements fully collateralized by obligations described in subsection 1 if delivery of the collateral is taken either directly or through an authorized custodian, up to a maximum of twenty percent of capital and surplus of the state bank in any one company or trust.

*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.

*k.* Shares in the federal agricultural mortgage corporation.

*l.* When approved by the superintendent, shares of a corporation certified by the federal agricultural mortgage corporation which is engaged solely in pooling agricultural loans for federal agricultural mortgage corporation guarantees, not to exceed twenty percent of the capital and surplus of the state bank.

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.

7. a. A state bank may invest in real estate as set forth in paragraph "b", subject to the following limitations:

(1) The investment shall be approved by the superintendent.  
 (2) The investment shall be for economic or community development purposes only.

(3) The total aggregate amount invested shall not exceed twenty percent of the capital and surplus of the state bank.

(4) The real estate purchased shall not be agricultural-zoned land.

b. The state bank may acquire real estate as follows:

(1) At a sheriff's sale or any other sale of real estate against which the state bank has a legal or equitable lien or claim.

(2) In satisfaction of any obligation to the state bank.

(3) Upon contracts for sale or improvement and sale, at the cost of the land and improvements, if the contracts are executed concurrently or prior to the purchase. However, the transaction is subject to the limitations on real estate loans.

(4) In exchange for real estate owned by the state bank.

(5) In connection with salvaging the value of property owned by the state bank.

(6) For the purpose of producing income through the improvement or erection of a building and the sale or rental of the property.

8. If approved by the superintendent, a state bank may invest in a community development corporation. A state bank shall have the same authority to invest in a community development corporation as does a federal bank pursuant to Title XII of the United States Code.

9. A state bank may invest without limitation for its own account in 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.

89 Acts, ch 49, §1 HF 575; 89 Acts, ch 257, §10-15 HF 234

Subsection 1, paragraph b amended

Subsection 1, paragraphs f and g stricken

Subsection 3, paragraphs c and i amended

NEW subsections 7-9

### **524.904 Obligations of one customer.**

1. For the purpose of this section:

a. The term "obligations" means the amounts for the payment of which a customer is obligated, whether directly or indirectly, primarily or secondarily, to a state bank as a result of the exercise by the state bank of the powers conferred by section 524.902.

b. Obligations of a customer include obligations of others to a state bank arising out of loans made by such state bank for the benefit of such customer.

c. Obligations of a customer who is a partner include the obligations of a partnership or other unincorporated association for which obligations the customer is liable.

d. Obligations of a customer which is a partnership or other unincorporated association include the obligations of its partners who are liable for its obligations.

e. Obligations of a customer include the obligations of any and all corporations in which such customer owns or controls more than fifty percent of the shares entitled to vote.

f. Obligations of a customer which is a corporation include obligations of a person, who is also a customer, and who owns or controls more than fifty percent of the shares entitled to vote of such corporation.

g. Obligations of a customer which is a corporation include the obligations of any other corporation when a person owns or controls more than fifty percent of the shares entitled to vote, of such corporations.

h. If the superintendent shall determine at any time that the interests of a group of more than one customer, or any combination thereof, are so interrelated that they should be considered as a unit for the purpose of applying the limitations of this section, the total obligations of that group of customers existing at any time shall be combined and deemed obligations of one customer. A state bank shall not be deemed to have violated this section solely by reason of the fact that the obligations of a group exceed the limitations of this section at the time of a determination by the superintendent that the indebtedness of that group must be combined, but the state bank shall, if required by the superintendent, dispose of the obligations of the group in the amount in excess of the limitations of this section within such reasonable time as shall be fixed by the superintendent.

2. The total obligations of any one customer to a state bank at any one time, secured and unsecured, shall not exceed twenty percent of the capital and surplus of the state bank except that:

a. The total obligations of any one customer to a state bank at any one time, shall not exceed forty percent of the capital and surplus of the state bank if at least all of the amount by which such obligations exceed twenty percent of the capital and surplus of the state bank shall consist of any of the following or any combination of the following:

(1) Obligations in the form of notes or drafts, secured by nonnegotiable bills of lading, warehouse receipts or other documents transferring or securing title covering readily marketable nonperishable staples when such goods are covered by insurance to the extent that insuring such goods is customary, and when the market value of such goods is not at any time less than one hundred twenty percent of the face amount of such obligations.

(2) Obligations in the form of notes or drafts secured by nonnegotiable bills of lading, warehouse receipts or other documents transferring or securing title covering readily marketable refrigerated or frozen staples when such goods are fully covered by insurance and when the market value of such goods is not at any time less than one hundred twenty percent of the face amount of such obligations.

(3) Obligations in the form of notes or drafts secured by bills of lading, bills of sale or security agreements covering feeder livestock or female animals purchased and held for resale, or raised and held for sale prior to giving birth to their first offspring or after giving birth to but prior to weaning of their first offspring. Such livestock loans, including renewals or extensions thereof, made under the foregoing provisions shall not be made for a period in excess of eighteen months. In the case of purchase price livestock, the proceeds of such obligations shall have been given as purchase money for all or part of the purchase price of such livestock, but not to exceed the purchase price thereof. In the case of nonpurchase livestock, the proceeds of such obligations shall not be in an amount in excess of the prevailing local market price at the time of the loan, and the bank shall maintain proof of this fact.

(4) Obligations of the customer as endorser, guarantor or accommodation party for others, other than obligations as endorser of chattel paper described in paragraph "b" of this subsection.

(5) Such other obligations to a state bank as may be prescribed by the superintendent by regulations of general application to all state banks, or

b. The total obligations of any one customer to a state bank at any one time shall not exceed sixty percent of the capital and surplus of the state bank if at

least all of the amount by which such obligations exceed twenty percent of the capital and surplus of the state bank shall consist of obligations as endorser of negotiable chattel paper negotiated by endorsement with recourse, or as unconditional guarantor of nonnegotiable chattel paper, or as transferor of chattel paper endorsed without recourse subject to a repurchase agreement, or

c. The total obligations of any one customer to a state bank at any one time shall not exceed the sum of twenty percent of the capital and surplus and fifty percent of the capital of the state bank, if at least all of the amount by which such obligations exceed twenty percent of the capital and surplus of a state bank shall consist of obligations secured by a first lien on farmland, or on single family or two family residences, subject to the provisions of section 524.905, except that the amount so loaned shall not exceed fifty percent of the appraised value of such real property, or

d. The total obligations of any one customer, which is an individual or a corporation, to a state bank at any one time shall not exceed forty percent of the capital and surplus of the state bank if all of the amount by which such obligations exceed twenty percent of the capital and surplus of the state bank consists of amounts owed by one or more corporations of which the customer owns or controls more than fifty percent of the shares entitled to vote, or, if the customer is a corporation, of amounts owed by another corporation which owns or controls more than fifty percent of the shares of the customer entitled to vote, or of amounts owed by one or more other corporations more than fifty percent of the voting shares of each of which are owned or controlled by a person which also owns or controls more than fifty percent of the shares of the customer entitled to vote, provided however, when this paragraph applies:

(1) The amounts owed by such customer shall not exceed twenty percent of the capital and surplus of the state bank.

(2) The amounts owed by any one or all of the corporations other than the customer shall not exceed twenty percent of the capital and surplus of the state bank.

(3) The shares, assets and any liabilities of any such corporation other than the customer shall not be included in the financial statement of such customer or otherwise relied upon as a basis for a loan to such customer.

(4) The assets or guarantee of such customer shall not be relied upon as a basis for a loan to any such corporation.

(5) The proceeds of the amounts owed by the customer shall not be intermingled with or used for a common purpose with the proceeds of the amounts owed by the corporation or corporations other than the customer.

For the purposes of this paragraph, the term "amounts owed" means the amounts for the payment of which such customer or any one or all such corporations are obligated, whether directly or indirectly, primarily or secondarily, to a state bank as a result of the exercise by the state bank of the powers conferred by section 524.902, but determined without reference to paragraphs "e", "f" and "g" of subsection 1 of this section.

3. The total obligations of any one customer to a state bank at any one time for the purpose of applying the limitations of subsection 2 of this section shall include:

a. The aggregate rentals payable by the customer under leases of personal property by the state bank as lessor, except obligations secured by a lease on property in situations described in the second sentence of paragraph "h" of subsection 4 of this section.

b. Obligations secured by real property pursuant to section 524.905 and installment obligations, except to the extent any such obligations are secured, guaranteed, insured or covered by unconditional commitments or agreements to purchase by the United States, veterans administration, federal housing admin-

istration, small business administration, farmers home administration, a federal reserve bank, or other department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States.

c. Obligations of the customer by reason of acceptance by the state bank of drafts of a type not described in subsection 1 of section 524.903, to the extent that the state bank has acquired such acceptances.

d. Obligations of the customer consisting of bonds and securities in which the state bank has invested pursuant to section 524.901, subsection 2.

e. Amounts invested by a state bank for its own account pursuant to section 524.901, subsection 3, paragraphs "c" and "f", in the shares and obligations of a corporation which is a customer of the state bank.

f. Obligations of the customer as obligor pursuant to evidences of indebtedness and agreements for the payment of money acquired by purchase or discount by the state bank.

g. All other obligations of the customer of the state bank, not otherwise excluded by subsection 4 of this section, whether direct or indirect, primary or secondary, including overdrafts and liability for items paid by the state bank against uncollected deposits of the customer.

4. The total obligations of any one customer to a state bank at any one time for the purpose of applying the limitations of subsection 2 of this section shall not include:

a. Obligations of such customer as the drawer of drafts drawn in good faith against actually existing values in connection with a sale of goods which have been endorsed by such customer with recourse or which have been accepted.

b. Obligations arising out of the discount of commercial paper actually owned by the customer negotiating the same and endorsed by the customer without recourse and which is not subject to repurchase by the customer.

c. Obligations drawn by the customer in good faith against actually existing values and secured by nonnegotiable bills of lading for goods in process of shipment.

d. Obligations in the form of acceptances of other banks of the kind described in section 524.903, subsection 3.

e. Obligations of the customer by reason of acceptances by the state bank for the account of the customer pursuant to section 524.903, subsection 1.

f. Obligations of the customer which are fully secured by bonds and securities of the kind in which a state bank is authorized to invest for its own account without limitation under section 524.901, subsection 1.

g. Obligations of a customer which is a bank to the extent the obligations are repayable on demand or on the first business day following demand for repayment.

h. Obligations of a federal reserve bank or of the United States, or of any department, bureau, board, commission, agency, or establishment of the United States, or of any corporation owned directly or indirectly by the United States, or obligations of a customer to the extent that such obligations are secured or guaranteed or covered by unconditional commitments or agreements to purchase by a federal reserve bank or by the United States, or any department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States. An obligation of a customer secured by a lease on property under the terms of which the United States, or any department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States, or the state of Iowa, or any political subdivision thereof, is lessee and under the terms of which the aggregate rentals payable to the customer will be sufficient to satisfy the amount loaned shall be considered to be an obligation secured or guaranteed in the manner provided for in this paragraph.

i. Obligations of a customer as endorser or guarantor for a corporation in which that customer owns or controls more than fifty percent of the shares entitled to vote, provided that under rules promulgated by the superintendent the customer and the corporation qualify as separate customers because the assets and the demonstrated ability to generate income of the corporation and the customer taken together are adequate to secure and fund all outstanding and contemplated debt of the corporation and the customer.

j. Obligations of the customer equal in dollar amount to the amount of time certificates of deposit in the state bank, held in the name of that customer, which the state bank may lawfully offset against the obligations of that customer in the event of default. For the purpose of this paragraph an amount held in a time certificate of deposit in the name of more than one customer shall be counted only once with respect to all such customers, allocated as the customers may determine.

89 Acts, ch 257, §16 HF 234  
Subsection 3, paragraph b amended

**524.906 Installment loans by state banks.** Repealed by 89 Acts, ch 257, §33. See §524.904(3b). HF 234

#### **524.907 Participations.**

A state bank may purchase and may sell, subject to the provisions of sections 524.901, 524.904, and 524.905, and to such regulations as the superintendent may prescribe, participations in one or more evidences of indebtedness and agreements for the payment of money, and pools of bonds, securities, evidences of indebtedness and agreements for the payment of money.

89 Acts, ch 257, §17 HF 234  
Section amended

#### **524.1005 Trust companies operating on January 1, 1970.**

1. A trust company existing and operating on January 1, 1970 and which was authorized to act only as a trust company may continue to act only in a fiduciary capacity according to the terms of its articles of incorporation. The articles of incorporation of the trust company may be renewed in perpetuity. When applicable, this chapter applies to the operations of the trust company. Section 524.107, subsection 2, regarding the use of the word "trust" does not apply to a trust company subject to this section.

2. Notwithstanding subsection 1, a trust company shall have the power to do all of the following:

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 of a corporation engaged solely in holding and operating real property used wholly or substantially by the trust company in its operation or acquired for its future use.

d. Subject to the prior approval of the superintendent, acquire and hold shares of a corporation organized to perform, or performing, functions or activities that may be performed by a trust company, including activities of a fiduciary, agency, or custodial nature, in the manner authorized by federal or state law, as long as the corporation is not a bank and does not make loans and investments or accept deposits other than the following permitted deposits:

(1) Deposits that are generated from trust funds not currently invested and that are properly secured to the extent required by law.

(2) Deposits representing funds received for a special use in the capacity of managing agent or custodian for an owner of, or investor in, real property, securities, or other personal property; or for such owner or investor as agent or

custodian of funds held for investment or as escrow agent; or for an issuer of, or broker or dealer in securities, in a capacity such as a paying agent, dividend disbursing agent, or securities clearing agent. However, such deposits shall not be employed by or for the account of the customer in the manner of a general purpose checking account or interest-bearing account.

(3) Making call loans to securities dealers or purchasing money market instruments such as certificates of deposit, commercial paper, government or municipal securities, and bankers acceptances. Such authorized loans and investments, however, shall not be used as a method of channeling funds to nontrust company affiliates of the trust company.

e. Subject to the prior approval of the superintendent, acquire and hold shares of a corporation organized to perform, or performing, the collection of charges and premiums from, or adjusting and settling claims on, residents of this state and any other state where authorized or qualified to conduct such activity, in connection with life or health insurance coverage or annuities.

89 Acts, ch 257, §18 HF 234  
Section amended

#### **524.1102 Loans and other transactions with affiliates.**

No state bank shall make any loan or any extension of credit to, or purchase securities under repurchase agreement from, any of its affiliates, or invest any of its funds in the shares, bonds, capital securities, or other obligations of any such affiliate, or accept the shares, bonds, capital securities, or other obligations of any such affiliate as collateral security for advances made to any customer, if the aggregate amount of such loans, extensions of credit, repurchase agreements, investments and advances against such collateral security will exceed:

1. In the case of any one such affiliate, ten percent of the capital and surplus of the state bank. However, a state bank may invest its funds in shares of a bank service corporation pursuant to section 524.803, subsection 1, paragraph f, in an amount up to twenty percent of the capital and surplus of the state bank.

2. In the case of all such affiliates, twenty percent of the capital and surplus of such state bank.

Within the foregoing limitations, each loan or extension of credit of any kind or character to an affiliate shall be secured by collateral in the form of shares of stock, bonds, capital securities or other such obligations having a market value at the time of making the loan or extension of credit of at least twenty percent more than the amount of the loan or extension of credit, or of at least ten percent more than the amount of the loan or extension of credit if it is secured by obligations of any state, or of any political subdivision or agency thereof.

A loan or extension of credit to a director, officer, clerk or other employee or any representative of any such affiliate shall be deemed a loan to the affiliate to the extent that the proceeds of such loan are used for the benefit of, or transferred to, the affiliate.

The provisions of this section shall not apply to loans or extensions of credit fully secured by obligations of the United States, or the farm credit banks, or the federal home loan banks, or obligations fully guaranteed by the United States as to principal and interest. The provisions of this section shall likewise not apply to indebtedness of any affiliate for unpaid balances due a state bank on assets purchased from such bank.

For the purposes of this section, the term "extension of credit" and "extensions of credit" shall be deemed to include any purchase of securities, other assets or obligations under repurchase agreement, and the discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse.

89 Acts, ch 257, §19, 20 HF 234  
Subsection 1 amended  
Unnumbered paragraph 4 amended

**524.1103 Exceptions.**

The provisions of section 524.1102 shall not apply to any affiliate:

1. Engaged solely in holding or operating real estate used wholly or substantially by the state bank in its operations or acquired for its future use.
2. Engaged solely in conducting a safe-deposit business or the business of an agricultural credit corporation eligible to discount loans with a farm credit bank.
3. Engaged solely in holding obligations of the United States, the farm credit banks, the federal home loan banks, or obligations fully guaranteed by the United States as to principal and interest.
4. Where the affiliate relationship has arisen as a result of shares acquired in satisfaction of a bona fide debt contracted prior to the date of the creation of such relationship provided that such shares shall be sold at public or private sale within one year from the date of the creation of the relationship, unless the time is extended by the superintendent.
5. Where the affiliate relationship exists by reason of the ownership or control of any voting shares thereof by a state bank as executor, administrator, trustee, receiver, agent, depository, or in any other fiduciary capacity, except where such shares are held for the benefit of all or a majority of the shareholders of such state bank.
6. Which is a bank.

89 Acts, ch 257, §21, 22 HF 234  
Subsections 2 and 3 amended

**524.1201 General provisions.**

A bank shall not open or maintain a branch bank. A state bank may establish and operate bank offices subject to approval and regulation of the superintendent and to the restrictions upon location and number imposed by section 524.1202. A bank office may furnish all banking services ordinarily furnished to customers and depositors at the principal place of business of the state bank which operates the office, and a bank office manager or an officer of the bank shall be physically present at each bank office during a majority of its business hours. The central executive and official business and principal recordkeeping functions of a state bank shall be exercised only at its principal place of business, except that data processing services referred to in section 524.804 may be performed for the state bank at some other point. All transactions of a bank office shall be immediately transmitted to the principal place of business of the state bank which operates the office, and no current recordkeeping functions shall be maintained at a bank office except to the extent the state bank which operates the office deems it desirable to keep there duplicates of the records kept at the principal place of business of the state bank. Notwithstanding any of the provisions of this section, original trust recordkeeping functions may be centrally located at an authorized bank office. Original loan documentation recordkeeping functions may be located at an authorized bank office, subject to the approval of the superintendent.

89 Acts, ch 257, §23 HF 234  
Section amended

**524.1202 Location of offices.**

The location of any new bank office, or any change of location of a previously established bank office, shall be subject to the approval of the superintendent. No state bank shall establish a bank office outside the boundaries of the counties contiguous to or cornering upon the county in which the principal place of business of the state bank is located.

1. Except as otherwise provided in subsection 2 of this section, no state bank shall establish a bank office outside the corporate limits of a municipal corporation or in a municipal corporation in which there is already an established state or national bank or office, however the subsequent chartering and establishment

of any state or national bank, through the opening of its principal place of business within the municipal corporation where the bank office is located, shall not affect the right of the bank office to continue in operation in that municipal corporation. The existence and continuing operation of a bank office shall not be affected by the subsequent discontinuance of a municipal corporation pursuant to the provisions of sections 368.11 to 368.22. A bank office existing and operating on July 1, 1976, which is not located within the confines of a municipal corporation, shall be allowed to continue its existence and operation without regard to this subsection.

2. *a.* A state bank may establish bank offices within the municipal corporation or urban complex in which the principal place of business of the bank is located, subject to the following conditions and limitations:

(1) If the municipal corporation or urban complex has a population of one hundred thousand or less according to the most recent federal census, the state bank shall not establish more than four bank offices.

(2) If the municipal corporation or urban complex has a population of more than one hundred thousand but not more than two hundred thousand according to the most recent federal census, the state bank shall not establish more than five bank offices.

(3) If the municipal corporation or urban complex has a population of more than two hundred thousand according to the most recent federal census, the state bank shall not establish more than six bank offices.

*b.* For purposes of this subsection, "urban complex" means the geographic area bounded by the corporate limits of two or more municipal corporations, each of which being contiguous to or cornering upon at least one of the other municipal corporations within the complex. A state bank located in a municipal corporation or urban complex which is located on a boundary of this state and contiguous to a municipal corporation in another state may have one bank office in addition to the number of bank offices permitted by paragraph "a"; provided that nothing contained in this paragraph authorizes a state bank to establish a bank office outside of the boundaries of this state.

*c.* One such facility located in the proximity of a state bank's principal place of business may be found by the superintendent to be an integral part of the principal place of business, and not a bank office within the meaning of this section. This paragraph does not authorize more than one facility to be found to be an integral part of a bank's principal place of business.

*d.* One such facility that is located on the same property, or that is adjacent to or cornering upon the property on which an office of a bank is located, or that is separated from being adjacent to or cornering upon the property only by a street, alley, or other publicly owned right of way, may be found by the superintendent to be an integral part of that office location and not a separate bank office within the meaning of this section. This paragraph does not authorize more than one facility to be found to be an integral part of a bank office.

3. Notwithstanding subsection 1, if the assets of a state or national bank in existence on January 1, 1989, are transferred to a different state or national bank in the state which is located in the same county or a county contiguous to or cornering upon the county in which the principal place of business of the acquired bank is located, the resulting or acquiring bank may convert to and operate as its bank office any one or more of the business locations occupied as the principal place of business or as a bank office of the bank whose assets are so acquired. The limitations on bank office locations contained in unnumbered paragraph 1 of this section, and the limitation on the number of bank offices within the municipality or urban complex of the resulting or acquiring bank contained in subsection 2 shall be applicable to any bank office otherwise authorized by this subsection. A bank office established under the authority of this subsection is subject to the

approval of the superintendent, shall be operated in accordance with this chapter relating to the operation of bank offices, and may be augmented by an integral facility when approved under subsection 2, paragraph "d".

89 Acts, ch 172, §2 HF 98; 89 Acts, ch 257, §24 HF 234  
 Subsection 2, paragraph a, subparagraphs 1, 2 and 3 amended  
 Subsection 3 amended

### 524.1213 United community bank offices.

1. A bank may convert to a united community bank office as provided in this section.

2. A united community bank office formed under this section shall have a united community bank office board, at least one-half or more of the members of which shall be residents of the county in which the united community bank office is located. The liability of the united community bank office board shall be limited as provided in section 524.614. The bank establishing and operating the united community bank office may indemnify members of the united community bank office board as agents of the bank in the manner and in the instances authorized by section 496A.4A.

3. Any two or more state banks, national banks, or state and national banks that are located in this state, that are affiliates as defined in section 524.1101, and that individually have been in existence and operated as banks continuously in this state for at least five years, may be merged or consolidated into a single state or national bank, and the resulting entity shall be a "united community bank". Subject to subsection 9, the resulting united community bank of the merger or consolidation:

a. Shall retain and operate as its principal place of business one of the principal places of business of the banks that are the parties to the merger or consolidation.

b. May retain and continue to operate as united community bank offices of the resulting bank any of the remaining principal places of business of the banks that are the parties to the merger or consolidation.

c. May retain and continue to operate as retained bank offices of the resulting united community bank any of the bank offices that are being operated as of the date of the merger or consolidation by any of the banks that are parties to the merger or consolidation.

d. May establish additional bank offices within the municipal corporation or urban complex in which a united community bank office referred to in paragraph "b" is located, provided that the number of bank offices of the resulting bank within that municipal corporation or urban complex, including bank offices retained under paragraph "c" and bank offices established under the authority of this paragraph, but excluding the united community bank office, shall not exceed the maximum number of bank offices permitted by section 524.1202, subsection 2, paragraph "a", for a bank located within that municipal corporation or urban complex.

e. May retain and continue to operate and may establish in conjunction with the resulting bank, or with any retained united community bank office, or with any other retained bank office, any facility authorized by section 524.1202, subsection 2, paragraph "c" or "d", and in operation at the time of the merger or consolidation or established after the merger or consolidation.

f. May relocate any principal place of business and any bank offices operated pursuant to this section by complying with other provisions of law applicable to relocation.

4. For purposes of subsection 3, the period of existence and operation of a bank shall be deemed continuous, notwithstanding any of the following:

a. Any direct or indirect change in the name, ownership, or control of the bank.

b. Any rechartering of the bank, or any merger or consolidation with one or more banks.

c. The bank acquired its initial assets and liabilities from the federal deposit insurance corporation, or other transferor, pursuant to a purchase and assumption transaction or any other type of transaction involving the transfer of ownership of a failed bank or other bank.

5. All united community bank offices and other bank offices retained by the resulting bank of a merger or consolidation under the authority of this section shall be deemed bank offices established under the authority of section 524.1201 for all intents and purposes of this chapter, except as is otherwise expressly provided in this section.

6. This section does not alter the limitations upon bank holding companies contained in section 524.1802.

7. This section shall be strictly construed as an exception to the bank office limitations contained in section 524.1202. It is the intent of the general assembly that a court or regulatory agency shall not deem, construe, or interpret this section to permit statewide branch banking or to permit the establishment of a bank office at any location in this state unless specifically authorized by this section or section 524.312 or 524.1202.

8. This section does not authorize the establishment of a bank office or an integral facility at any time by any bank except as a direct and immediate consequence of a merger or consolidation of two or more affiliated banks and as expressly permitted by subsection 3. This section does not authorize the resulting bank of a merger or consolidation to establish or retain any united community bank office, bank office, or integral facility at any location other than those expressly permitted by subsection 3, or to preserve any business location acquired in the merger or consolidation for subsequent use.

9. The resulting bank of a merger or consolidation shall not retain any united community bank office or any other bank office within the municipality or urban complex in which the principal office of the resulting bank is located if the resulting bank then would have a greater number of bank offices within that municipality or urban complex than is expressly permitted by section 524.1202, subsection 2.

10. As used in this section, the term “*bank*” does not include any entity unless it is chartered as a state or national bank and is authorized by its bylaws to, and actually does, accept deposits, pay checks, and make commercial loans.

89 Acts, ch 172, §3 HF 98  
NEW section

#### **524.1419 Offices of a resulting state bank.**

If a merger, consolidation or conversion results in a state bank subject to the provisions of this chapter, the resulting state bank shall, after the effective date of the merger, consolidation or conversion, be subject to all the provisions of sections 524.1201, 524.1202 and 524.1203 relating to the bank offices.

89 Acts, ch 257, §25 HF 234  
Section amended

## **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 sections 527.3, 527.5, subsection 7, 527.11, 527.12, and any other pertinent provision of this chapter.

2. "*Batch basis*" means the delivery of an accumulation of messages representing multiple transactions after completion of the transactions.

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, any corporation licensed as an industrial loan company under chapter 536A, and any bank, savings and loan association, or credit union incorporated under federal law or the laws of a state other than Iowa which has an office located within this state.

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 delivery or return of a message initiated at a satellite terminal through transmission of electronic impulses to or from a location remote from the location of the satellite terminal prior to completion of the transaction.

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. *"Satellite terminal"* also includes any machine or device located on the premises of a financial institution only if the machine or device is available for use by customers of other financial institutions. 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. *"On-line point-of-sale terminal"* means a satellite terminal that satisfies the requirements of section 527.4, subsection 3, paragraph "d" and is operated on an on-line real time basis.

12. *"Off-line point-of-sale terminal"* means a satellite terminal that satisfies the requirements of section 527.4, subsection 3, paragraph "d" and is other than an on-line point-of-sale terminal.

13. *"Office"* means and includes any business location in this state of a financial institution at which is offered the services of accepting deposits, originating loans, and dispensing cash, by financial institution personnel in the office.

14. *"Access device"* means a card, code, or other means of access to a customer's account, or any combination thereof, that may be used by the customer for the purpose of initiating a transaction by means of a satellite terminal.

15. *"Personal terminal"* means and includes a satellite terminal located in a personal residence and a telephone, wherever located, operated by a customer of a financial institution for the purpose of initiating a transaction affecting a noncommercial account of the customer.

16. *"Completion of the transaction"* means when the presence of the customer at a satellite terminal is no longer needed to consummate the sale of goods or services, to grant to the seller the right to receive payment for the goods or services, and to issue a receipt to the customer.

17. *"Reciprocal basis"* means that a financial institution whose licensed or principal place of business is located in this state has the express authority under the laws of a state other than Iowa to conduct business under qualifications and conditions which are no more restrictive than those imposed by the laws of the other state on financial institutions whose licensed or principal place of business is located in the other state, as determined by the administrator, and the laws of Iowa are no more restrictive of financial institutions whose licensed or principal place of business is located in such other state than they are of financial institutions whose licensed or principal place of business is located in this state.

89 Acts, ch 86, §1-7 SF 130  
Subsections 2, 5, 8 and 10 amended  
Subsection 11 stricken and rewritten  
NEW subsections 12-17

#### **527.4 Establishment of satellite terminals—restrictions.**

1. A satellite terminal shall not be established within this state except by a financial institution whose principal place of business is located in this state, one which has a business location licensed in this state under chapter 536A, or one which has an office located in this state and which meets the requirements of subsection 4.

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 unless the other state provides for the establishment of satellite terminals by Iowa financial institutions on a reciprocal basis.

3. A financial institution whose licensed or principal place of business is located within this state may establish any number of satellite terminals in any of the following locations:

a. 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.

b. Within the boundaries of 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 urban complex if the principal place of business or an office of the financial institution is also located in the urban complex.

c. Within the Iowa county in which the financial institution has its principal place of business or an office.

d. At any retail sales location in this state if all of the following apply:

(1) The satellite terminal is not designed, configured, or operated to accept deposits or to dispense scrip or other negotiable instruments.

(2) 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.

(3) 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.

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 subsection to establish a satellite terminal at that location and which will utilize the satellite terminal at that location. This subsection 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 subsection.

4. A financial institution whose licensed or principal place of business is not located in this state may establish, control, maintain, or operate any number of satellite terminals at the locations identified in subsection 3, paragraphs "a", "b", "c", and "d" if both of the following apply:

a. The other state provides for the establishment, control, maintenance, or operation of satellite terminals by a financial institution, whose licensed or principal place of business is located in this state, on a reciprocal basis.

b. All satellite terminals, wherever located, that are owned, controlled, maintained, or operated by the financial institution are available for use on a nondiscriminatory basis by any other financial institution which engages in electronic transactions in this state and by all customers who have minimum contact with this state and who have been designated by a financial institution using the satellite terminal and who have been provided with an access device, approved by the administrator, by which to engage in electronic transactions by means of the satellite terminal.

89 Acts, ch 86, §8-11 SF 130

1989 amendment to subsection 3 effective January 1, 1990; 89 Acts, ch 86, §17 SF 130

Subsections 1, 2 and 3 amended

NEW subsection 4

### 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. *a.* A 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 an access device, approved by the administrator, by which to engage in electronic transactions by means of the satellite terminal.

*b.* A financial institution shall not 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.

*c.* For the purposes of complying with paragraph "a", an on-line point-of-sale terminal is not required to be available for use by customers of a financial institution by means of an access device by which an off-line point-of-sale terminal can be used to engage in electronic transactions.

*d.* All off-line point-of-sale terminals located at the retail location or retail locations within this state of a single retailer are exempt from paragraph "a" if electronic transactions can be initiated at each of such terminals only by an access device unique to the retailer.

*e.* Paragraph "a" applies to a financial institution whose licensed or principal place of business is located in a state other than Iowa if all satellite terminals owned, controlled, operated, or maintained by the financial institution, wherever located, are available on a reciprocal basis to any financial institution whose licensed or principal place of business is located in this state, and to all customers who have been designated by a financial institution using the satellite terminal and who have been provided with an access device.

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.

*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.

10. A personal terminal may be utilized by a financial institution to the extent permitted by this chapter if the use and operation of the personal terminal is governed by a written agreement between the controlling financial institution and its customer and if the personal terminal is utilized and maintained in compliance with subsection 9 and all other applicable sections of this chapter. A telephone located at other than a personal residence and used primarily as a personal terminal must be utilized and maintained in compliance with this section.

89 Acts, ch 86, §12-14 SF 130  
Subsection 2 amended  
Subsection 9, paragraph b, subparagraph (2) amended.  
NEW subsection 10

### 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 an access device for 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 access device, 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.

89 Acts, ch 86, §15 SF 130  
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, whether receiving from that terminal or from a data processing center or other central routing unit.

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.

89 Acts, ch 86, §16 SF 130  
Subsection 2, paragraph e amended

## CHAPTER 528

### ALTERNATIVE MORTGAGE LOANS

#### 528.1 Title.

This chapter is entitled "*Alternative and Reverse Annuity Mortgage Loan Act*".

89 Acts, ch 267, §1 SF 361  
NEW section

#### 528.2 Definitions.

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

1. "*Administrator*" means the superintendent of banking, the superintendent of savings and loan associations, and the superintendent of credit unions within the department of commerce.

2. "*Alternative mortgage loan*" means a mortgage loan which is a reverse annuity mortgage loan or graduated payment mortgage loan.

3. "*Financial institution*" means financial institution as defined in section 535A.1.

4. "*Graduated payment mortgage loan*" means a mortgage loan in which principal and interest payments, if any, and the making of additional advances, if any, are scheduled to reflect the prospective increasing or decreasing income of the mortgagor.

5. "*Mortgage loan*" means a loan secured by a first mortgage on one, two, three, or four family, owner-occupied residential real property.

6. "*Reverse annuity mortgage loan*" means a mortgage loan in which either the loan proceeds are used to purchase an annuity with the annuity proceeds to be advanced to the mortgagors, or the loan proceeds are directly advanced to the mortgagors, in ten or more installments, either directly or indirectly, and which together with unpaid interest, if any, are to be repaid in accordance with section 528.7.

89 Acts, ch 267, §2 SF 361  
NEW section

### 528.3 Financial institutions allowed to make alternative mortgages.

A financial institution may make alternative mortgage loans in accordance with this chapter. General provisions governing a financial institution's mortgage loans apply to alternative mortgage loans unless inconsistent with the provisions of this chapter. This chapter does not prohibit a financial institution from making any loan which is not an alternative mortgage loan, provided such loan otherwise complies with applicable laws.

89 Acts, ch 267, §3 SF 361  
NEW section

### 528.4 Prepayment penalty prohibited.

A financial institution making an alternative mortgage loan may contract with the mortgagor for interest to be paid currently or to accrue, and if accrued, for accrued interest to be added to the mortgage debt on which interest may be charged and collected. Accrued interest which is added to the mortgage debt shall be secured by the mortgage to the same extent as the principal of the alternative mortgage loan. An instrument evidencing an alternative mortgage loan shall not contain a provision imposing a penalty for prepayment of the loan.

89 Acts, ch 267, §4 SF 361  
NEW section

### 528.5 Disclosure of alternative mortgage loan information to applicants.

1. A financial institution that offers or makes an alternative mortgage loan shall include in any disclosure of the rates or availability of mortgage loans, the rates and availability of reverse annuity mortgages or graduated payment mortgage loans, if and when such loans are offered. The administrator may prescribe by rule forms for the required disclosures.

2. A prospective mortgage loan applicant shall have the choice of applying for a mortgage loan or any type of alternative mortgage loan offered by the financial institution.

89 Acts, ch 267, §5 SF 361  
NEW section

### 528.6 Prototype plan for alternative mortgage loans—approval by administrator.

1. Before a financial institution makes an alternative mortgage loan, it shall submit to the administrator for that type of institution, for the administrator's approval, the prototype plan and subsequent amendments to the plan under which alternative mortgage loans are to be made. A plan submitted shall include a copy of the form of note and mortgage instrument that will be used for that type of alternative mortgage loan, a detailed description of how the plan will function, and other information as the administrator requires. The administrator shall specifically review the mortgage instrument submitted as part of the plan to ensure that any default provisions included in the deed pursuant to section 528.7, subsection 2, paragraph "c", are necessary to protect the interests of the mortgagee and are fair and equitable for the mortgagor. A reverse annuity mortgage shall provide that the mortgagor or mortgagors of the property shall

retain a life estate in the property until the death of the mortgagor or all of the mortgagors, notwithstanding that the annuity may expire prior to the end of the life estate, depending upon the terms of the annuity.

2. The administrator may approve any plan and amendment to a plan that in the administrator's opinion serves the best interests of prospective mortgagors and mortgagees. The administrator's considerations shall include, without limitation, the flexibility of each plan to serve the differing needs of various persons who may apply for an alternative mortgage loan under the plan.

3. If the administrator approves the plan or amendment, the financial institution may make alternative mortgage loans in accordance with the approved plan and any approved amendments.

4. This section applies to all alternative mortgage loans made on or after January 1, 1990.

89 Acts, ch 267, §6 SF 361  
NEW section

### **528.7 Reduction in installment payments—repayment of mortgage debt.**

1. If the mortgagee or its assignee and the mortgagor agree, any installment payment of either the loan proceeds or an annuity purchased with the loan proceeds of a reverse annuity mortgage loan may be reduced by an amount used for partial repayment of the mortgage debt, except as provided in subsection 2 of this section.

a. Notwithstanding any such reduction, each mortgagor shall receive a cash payment in each installment for the term of the annuity or, if no annuity, for the term during which the mortgagee contracted with the mortgagor to advance the loan proceeds.

b. Except as provided in subsection 2, no repayments of any part of the mortgage debt shall be required from the mortgagor after termination of the period during which loan proceeds or any annuity purchased with the loan proceeds are advanced to the mortgagor.

2. If the mortgagee or its assignee and the mortgagor agree, and at the option of the mortgagee, advances under a reverse annuity mortgage loan may terminate and the entire unpaid balance of the loan plus accrued interest may become due and payable upon the occurrence of any of the following events:

a. The death of the last surviving mortgagor.

b. The sale or other transfer of the real estate securing the loan to a person other than any of the original mortgagors.

c. Any other occurrence which materially decreases the value of the property securing the loan or which will have the likely effect of causing the loan not to be repaid. Any such additional occurrence shall be clearly described in the note or mortgage instrument.

89 Acts, ch 267, §7 SF 361  
NEW section

### **528.8 Interest on graduated payment mortgage loans.**

A graduated payment mortgage loan offered or made by a financial institution shall provide for interest at a specified rate or a series of specified rates.

89 Acts, ch 267, §8 SF 361  
NEW section

### **528.9 Rules.**

The administrator may adopt rules pursuant to chapter 17A, as the administrator deems necessary and convenient to carry out the provisions of this chapter.

89 Acts, ch 267, §9 SF 361  
NEW section

## CHAPTER 533

## CREDIT UNIONS

**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.
  - j. Corporate bonds as defined by and subject to terms and conditions imposed by the administrator, provided that the administrator shall not approve investment in corporate bonds unless the bonds are rated in the two highest grades of corporate bonds by a nationally accepted rating agency, including but not limited to a rating of AAA or AA from Standard and Poors.
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 with or without recourse. Purchase the obligations of 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.

89 Acts, ch 94, §1 SF 218

\*Chapter 496A repealed by 89 Acts, ch 288, §195. See ch 490, SF 502

Subsection 5, NEW paragraph j

### 533.24 Taxation.

A credit union shall be deemed an institution for savings and is subject to taxation only as to its real estate and moneys and credits. The shares shall not be taxed.

The moneys and credits tax on credit unions is imposed at a rate of five mills on each dollar of the legal and special reserves which are required to be maintained by the credit union under section 533.17, and shall be levied by the board of supervisors, and placed upon the tax list and collected by the county treasurer, except that an exemption shall be given to each credit union in the amount of forty thousand dollars. The amount collected in each taxing district within a city shall be apportioned twenty percent to the county, thirty percent to the city general fund, and fifty percent to the general fund of the state, and the amount collected in each taxing district outside of cities shall be apportioned fifty percent to the county and fifty percent to the general fund of the state. The moneys and credits tax shall be collected at the location of the credit union as shown in its articles of incorporation.

89 Acts, ch 296, §74 SF 141

Unnumbered paragraph 1 amended

## CHAPTER 533C

### CREDIT SERVICES ORGANIZATIONS

#### 533C.1 Definitions.

In this chapter, unless the context otherwise requires:

1. "*Buyer*" means an individual who is solicited to purchase or who purchases the services of a credit services organization.
2. "*Consumer reporting agency*" has the meaning assigned by section 603(f), Fair Credit Reporting Act, 15 U.S.C. §1681a(f) as amended through January 1, 1989.
3. "*Extension of credit*" means the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family, or household purposes.

89 Acts, ch 183, §1 HF 496  
NEW section

#### 533C.2 Credit services organization defined—exemptions.

1. A credit services organization is a person who, with respect to the extension of credit by others and in return for the payment of money or other valuable consideration, provides, or represents that the person can or will provide, any of the following services:
  - a. Improving a buyer's credit record, history, or rating.
  - b. Obtaining an extension of credit for a buyer.
  - c. Providing advice or assistance to a buyer with regard to paragraph "a" or "b".
2. The following are exempt from this chapter:
  - a. A person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision of this state or the United States, or a lender approved by the United States secretary of housing and urban development for participation in a mortgage insurance program under the National Housing Act, 12 U.S.C. §1701 et seq.
  - b. A bank or savings and loan association whose deposits or accounts are eligible for insurance by the federal deposit insurance corporation or the federal savings and loan insurance corporation, or successor deposit insurance entities, or a subsidiary of a bank or savings and loan association.
  - c. A credit union doing business in this state.
  - d. A nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code, as defined in section 422.3.
  - e. A person licensed as a real estate broker or salesperson, under section 117.20, acting within the course and scope of that license.
  - f. A person licensed to practice as an attorney in this state acting within the course and scope of the person's practice as an attorney.
  - g. A broker-dealer registered with the securities and exchange commission or the commodity futures trading commission acting within the course and scope of the regulations of the commission that person is registered with.
  - h. A consumer reporting agency.

89 Acts, ch 183, §2 HF 496  
NEW section

#### 533C.3 Prohibited conduct.

A credit services organization, a salesperson, agent, or representative of a credit services organization, or an independent contractor who sells or attempts to sell the services of a credit services organization shall not:

1. Charge a buyer or receive from a buyer money or other valuable consideration before completing performance of all services the credit services organization has agreed to perform for the buyer, unless the credit services organization

has obtained a bond in accordance with section 533C.4 or established and maintained a surety account at a federally insured bank or savings and loan association located in this state in the amount required by section 533C.4, subsection 5.

2. Charge a buyer or receive from a buyer money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer if the credit that is or will be extended to the buyer is substantially the same as that available to the general public.

3. Make or use a false or misleading representation in the offer or sale of the services of a credit services organization.

4. Engage, directly or indirectly, in a fraudulent or deceptive act, practice, or course of business in connection with the offer or sale of the services of a credit services organization.

89 Acts, ch 183, §3 HF 496  
NEW section

#### **533C.4 Bond—surety account.**

1. This section applies to a credit services organization required by section 533C.3, subsection 1, to obtain a surety bond or establish a surety account.

2. If a bond is obtained, a copy of it shall be filed with the secretary of state. If a surety account is established, notification of the depository, the trustee, and the account number shall be filed with the secretary of state.

3. If a bond is obtained, the bond shall be executed by a surety company authorized to do business in this state, and the bond shall be continuous in nature until cancelled by the surety with not less than thirty days' written notice to both the credit services organization and to the secretary of state. The notice shall indicate the surety's intent to cancel the bond effective on a date at least thirty days after the date of the notice.

4. The bond or surety account required must be in favor of the state for the benefit of any person who is damaged by a violation of this chapter.

5. A person claiming against the bond or surety account for a violation of this chapter may maintain an action at law against the credit services organization and against the surety or trustee. The surety or trustee is liable only for damages awarded under section 533C.9, subsection 1, and not the punitive damages permitted under that section. The aggregate liability of the surety or trustee to all persons damaged by a credit services organization's violation of this chapter shall not exceed the amount of the surety account or bond.

6. The bond or the surety account shall be in an amount of at least ten thousand dollars.

7. A depository holding money in a surety account under this chapter shall not convey money in the account to the credit services organization that established the account or a representative of the credit services organization unless the credit services organization or representative presents a statement issued by the secretary of state indicating that section 533C.5, subsection 6, has been satisfied in relation to the account. The secretary of state may conduct investigations and require submission of information as necessary to enforce this subsection.

89 Acts, ch 183, §4 HF 496  
NEW section

#### **533C.5 Registration.**

1. A credit services organization shall file a registration statement with the secretary of state before conducting business in this state. The registration statement must contain both of the following:

- a. The name and address of the credit services organization.
- b. The name and address of any person who directly or indirectly owns or controls ten percent or more of the outstanding shares of stock in the credit services organization.

2. The registration statement must also contain one of the following:
  - a. A full and complete disclosure of any litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization.
  - b. A notarized statement that there has been no litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization.
3. The credit services organization shall update the statement not later than the ninetieth day after the date on which a change in the information required in the statement occurs.
4. A credit services organization registering under this section shall maintain a copy of the registration statement in the files of the credit services organization. The credit services organization shall allow a buyer to inspect the registration statement on request.
5. The secretary of state may charge each credit services organization that files a registration statement with the secretary of state a reasonable fee not to exceed one hundred dollars to cover the cost of filing. The secretary of state shall not require a credit services organization to provide information other than that provided in the registration statement.
6. The bond or surety account shall be maintained until two years after the date that the credit services organization ceases to operate.

89 Acts, ch 183, §5 HF 496  
NEW section

#### **533C.6 Disclosure statement.**

1. Before executing a contract or agreement with a buyer, or receiving money or other valuable consideration, a credit services organization shall provide the buyer with a statement in writing, containing all of the following:
  - a. A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of the services.
  - b. A statement explaining the buyer's rights to proceed against the bond or surety account required by section 533C.4.
  - c. The name and address of the surety company which issued the bond, or the name and address of the depository and the trustee, and the account number of the surety account.
2. The credit services organization shall maintain on file for a period of two years after the date the statement is provided, an exact copy of the statement, signed by the buyer, acknowledging receipt of the statement.

89 Acts, ch 183, §6 HF 496  
NEW section

#### **533C.7 Form in terms of contract.**

1. A contract between the buyer and a credit services organization for the purchase of the services of the credit services organization must be in writing, dated, signed by the buyer, and must include all of the following:
  - a. A conspicuous statement in boldface type, in immediate proximity to the space reserved for the signature of the buyer, as follows: **"You, the buyer, may cancel this contract at any time before midnight of the third day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right."**
  - b. The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to another person.
  - c. A full and detailed description of the services to be performed by the credit services organization for the buyer, including all guarantees and all promises of full or partial refunds, and the estimated date by which the services are to be performed or estimated length of time for performing the services.

d. The address of the credit services organization's principal place of business and the name and address of its agent in the state authorized to receive service of process.

2. The contract must have attached two easily detachable copies of the notice of cancellation. The notice must be in boldface type and in the following form:

**Notice of Cancellation**

**You may cancel this contract, without any penalty or obligations, within three days after the date the contract is signed.**

**If you cancel, any payment made by you under this contract will be returned within ten days after the date of receipt by the seller of your cancellation notice.**

**To cancel this contract, mail or deliver a signed, dated copy of this cancellation notice or other written notice to: (name of seller) at (address of seller) (place of business) not later than midnight (date).**

**(date).....**

**(Purchaser's signature).....**

3. The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time they are signed.

89 Acts, ch 183, §7 HF 496  
NEW section

**533C.8 Waiver.**

1. A credit services organization shall not attempt to cause a buyer to waive a right under this chapter.

2. A waiver by a buyer of any part of this chapter is void.

89 Acts, ch 183, §8 HF 496  
NEW section

**533C.9 Action for damages.**

1. A buyer injured by a violation of this chapter may bring an action for recovery of damages. The damages awarded shall not be less than the amount paid by the buyer to the credit services organization, plus reasonable attorney's fees and court costs.

2. The buyer may also be awarded punitive damages.

89 Acts, ch 183, §9 HF 496  
NEW section

**533C.10 Injunction.**

The attorney general or a buyer may bring an action in a district court to enjoin a violation of this chapter.

89 Acts, ch 183, §10 HF 496  
NEW section

**533C.11 Statute of limitations.**

An action shall not be brought under section 533C.9 after ten years after the date of the execution of the contract for services to which the action relates.

An action shall not be brought under section 533C.12 after four years after the date of the execution of the contract for services to which the action relates.

89 Acts, ch 183, §11 HF 496  
NEW section

**533C.12 Criminal penalty.**

A person who violates a provision of this chapter commits a serious misdemeanor.

89 Acts, ch 183, §12 HF 496  
NEW section

**533C.13 Burden of proving exemption.**

In an action under this chapter, the burden of proving an exemption under section 533C.2, subsection 2, is upon the person claiming the exemption.

89 Acts, ch 183, §13 HF 496  
NEW section

**533C.14 Remedies cumulative.**

The remedies provided by this chapter are in addition to other remedies provided by law.

89 Acts, ch 183, §14 HF 496  
NEW section

## CHAPTER 535

### MONEY AND INTEREST

**535.12 Loans by agricultural credit corporation.**

1. An agricultural credit corporation, as defined in subsection 4, may lend money pursuant to a written promissory note or other writing evidencing the loan obligation, at a rate of interest which is not more than four percentage points above the lending rate in effect at the farm credit bank of Omaha, Nebraska, for the month during which the writing evidencing the loan obligation is made, provided that the loan is for an agricultural production purpose as defined in subsection 5 and further provided that the loan would, but for this section, be subject to the maximum rate of interest prescribed by section 535.2, subsection 3, paragraph "a".

2. On or prior to the first day of each calendar month following June 13, 1980, the superintendent of banking shall determine the maximum rate of interest which may be charged pursuant to subsection 1 of this section on loans made by an agricultural credit corporation during that month, and shall cause the maximum rate to be published as soon after determination as possible, as a notice in the Iowa Administrative Bulletin or as a legal notice in a newspaper of general circulation published in Polk county. The maximum rate so determined shall be effective as provided in subsection 1 of this section regardless of the date of publication of the notice, except that no agricultural credit corporation shall be found in violation of this chapter solely on account of having made a loan on or prior to the day on which a notice of a maximum rate is published as provided in this subsection, if the loan would have been lawful if made during the preceding calendar month.

3. This section does not prohibit an agricultural credit corporation from lending money as otherwise permitted by law.

4. As used in this section, "*agricultural credit corporation*" means a corporation which has been designated by the farm credit bank of Omaha, Nebraska, as an agricultural credit corporation eligible to sell or discount loans to that bank pursuant to 12 U.S.C. §2074.

5. As used in this section "*agricultural production purpose*" means a purpose related to the production of agricultural products. "*Agricultural products*" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products thereof, and any and all products produced on farms.

## CHAPTER 535B

## MORTGAGE BANKERS AND BROKERS

**535B.1 Definitions.**

As used in this chapter unless the context otherwise requires:

1. "*Mortgage banker*" means a person who does one or more of the following:
  - a. Makes at least four first mortgage loans on residential real property located in this state in a calendar year.
  - b. Originates at least four first mortgage loans on residential real property located in this state in a calendar year and sells four or more such loans in the secondary market.
  - c. Services at least four first mortgage loans on residential real property located in this state. However, a natural person, who services less than fifteen first mortgage loans on residential real estate within the state and who does not sell or transfer first mortgage loans, is exempt from this paragraph if that person is otherwise exempt from the provisions of this chapter.
2. "*Mortgage broker*" means a person who arranges or negotiates, or attempts to arrange or negotiate, at least four first mortgage loans or commitments for four or more such loans on residential real property located in this state in a calendar year.
3. "*Residential real property*" means real property, which is an owner-occupied single-family or two-family dwelling, located in this state, occupied or used or intended to be occupied or used for residential purposes, including an interest in any real property covered under chapter 499B.
4. "*Person*" means an individual, an association, joint venture or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, or any other group of individuals however organized.  
"*Natural person*" means an individual who is not an association, joint venture, or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, other business entity, or any other group of individuals or business entities, however organized.
5. "*Licensee*" means a person licensed under this chapter; however, any individual who is acting solely as an employee or agent of a mortgage banker or broker licensed under this Act need not be separately licensed.
6. "*Administrator*" means the superintendent of the division of savings and loans of the department of commerce.
7. "*First mortgage loan*" means a loan of money secured by a first lien on residential real property and includes a refinancing of a contract of sale, an assumption of a prior loan, and a refinancing of a prior loan.
8. "*Registrar*" means a person registered under section 535B.3.

89 Acts, ch 133, §1-3 HF 645  
 Subsection 1, paragraph c amended  
 Subsection 4, NEW unnumbered paragraph 2  
 NEW subsection 8

**535B.2 Exemptions.**

This chapter, except for sections 535B.3, 535B.11, 535B.12, and 535B.13, does not apply to any of the following:

1. A national bank.
2. A federally chartered savings and loan association.
3. A federally chartered savings bank.
4. A federally chartered credit union.
5. A loan company licensed under chapter 536 or 536A.
6. A bank organized under chapter 524.
7. A savings and loan association or savings bank organized under chapter

8. A credit union organized under chapter 533.
9. An insurance company organized under the laws of this state and subject to regulation by the commissioner of insurance.
10. A wholly owned subsidiary of an organization listed in subsections 1 through 9 if the listed organization has its principal place of business in Iowa.
11. A bank, savings and loan association, credit union, or insurance company organized or chartered under the laws of any other state, provided the financial institution or insurance company has a place of business in Iowa or in a county of another state if that county is contiguous to an Iowa border.
12. Mortgage lenders or mortgage bankers maintaining an office in this state whose principal business in this state is conducted with or through mortgage lenders or mortgage bankers otherwise exempt under this section and which maintain a place of business in this state.

89 Acts, ch 83, §76 SF 112; 89 Acts, ch 133, §4, 5 HF 645  
 Unnumbered paragraph 1 amended  
 Subsections 11 and 12 amended

### 535B.3 Registration.

1. A person exempt under section 535B.2, subsection 10, 11, or 12, shall register with the administrator.
2. A registrant shall submit to the administrator a registration statement on forms provided by the administrator. The forms shall include all addresses at which business is to be conducted, the names and titles of each director and principal officer of the business, and a description of the activities of the applicant in such detail as the administrator may require.
3. The registrant shall pay an annual registration fee of one hundred dollars.
4. A registration under this chapter is not assignable.

89 Acts, ch 133, §6 HF 645  
 Subsection 3 amended

### 535B.4 General licensing requirements.

1. A person shall not act as a mortgage banker or mortgage broker in this state or use the title "mortgage banker" or "mortgage broker" without first obtaining a license from the administrator.
2. License applicants shall submit to the administrator an application on forms provided by the administrator. The forms shall include, at a minimum, all addresses at which business is to be conducted, the names and titles of each director and principal officers of the business, and a description of the activities of the applicant in such detail as the administrator may require.
3. The applicant shall also submit a recently prepared certified financial statement.
4. The applicant for an initial license shall submit a fee in the amount of five hundred dollars.
5. Licenses granted under this chapter are not assignable.
6. Licenses granted under this chapter expire on the next June 30 after their issuance.
7. Applications for renewals of licenses under this chapter must be filed with the administrator before June 1 of the year of expiration and must be accompanied by a fee of two hundred dollars for a license to transact business solely as a mortgage broker, and four hundred dollars for a license to transact business as a mortgage banker.

89 Acts, ch 133, §7 HF 645  
 Subsection 7 amended

### 535B.9 Bonds required of license applicants.

1. An applicant for a license shall file with the administrator a bond furnished by a surety company authorized to do business in this state. The bond shall be in

the amount of fifteen thousand dollars for an applicant seeking to transact business solely as a mortgage broker, or thirty thousand dollars for an applicant seeking to transact business as a mortgage banker. The bond shall be continuous in nature until canceled by the surety with not less than thirty days' notice in writing to the mortgage broker or mortgage banker and to the administrator indicating the surety's intention to cancel the bond on a specific date. The bond shall be for the use of the state and any persons who may have causes of action against the applicant. The bond shall be conditioned upon the applicant's faithfully conforming to and abiding by this chapter and any rules adopted under this chapter and shall require that the surety pay to the state and to any persons all moneys that become due or owing to the state and to the persons from the applicant by virtue of this chapter.

2. In lieu of filing a bond, the applicant may pledge an alternative form of collateral acceptable to the administrator, if the alternative collateral provides protection to the state and any aggrieved person that is equivalent to that provided by a bond.

89 Acts, ch 133, §8 HF 645  
Section stricken and rewritten

### **535B.11 Servicing mortgages and payoffs.**

A licensee or other mortgagee who services mortgages on residential real estate located in this state shall do all of the following:

1. Disburse required funds paid by the mortgagor and held in escrow for the payment of real estate taxes and insurance payments no later than their final due date.

2. Pay penalties incurred by the mortgagor due to the licensee's or mortgagee's failure to meet the due dates referred to in subsection 1 unless the licensee or mortgagee can show that the failure was due solely to the fact that the mortgagor received a statement of the amount due more than fifteen days before the due date and has failed to remit it to the licensee or mortgagee.

3. Perform a complete escrow analysis yearly. A clear and legible copy of the yearly analysis shall be promptly mailed to the mortgagor. If there is a change in the payment amount, the analysis shall be mailed at least twenty days before the effective date of the change. The summary shall contain all of the following information:

a. The name and address of the mortgagee.  
b. The name and address of the mortgagor.  
c. A summary of escrow account activity during the year which includes all of the following:

(1) The balance of the escrow account at the beginning of the year.  
(2) The aggregate amount of deposits to the escrow account during the year.  
(3) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(a) Payments against loan principal.  
(b) Payments against interest.  
(c) Payments against real estate taxes.  
(d) Payments for real property insurance premiums.  
(e) All other withdrawals.  
(4) A summary of loan principal for the year as follows:  
(a) The amount of principal outstanding at the beginning of the year.  
(b) The aggregate amount of payments against principal during the year.  
(c) The amount of principal outstanding at the end of the year.

Compliance with sections 524.905, 533.16, 534.206, and 536A.20 shall constitute compliance with this subsection.

4. Answer in writing, within ten business days of receipt, any written request for payoff information received from a mortgagor or the mortgagor's designated representative.

5. Execute and deliver a release after payoff and within forty-five days after receipt of correct payment. If the licensee or mortgagee fails to execute and deliver a release of lien to the mortgagor or the mortgagor's designated representative, the mortgagor or the mortgagor's designated representative may notify in writing the administrator and any other official to whom the mortgagee is primarily subject. The administrator shall promptly mail by certified mail to the licensee or mortgagee a notice stating that the licensee or mortgagee must both release the mortgage and deliver the release to the administrator within fifteen days of receipt of said notice or face a penalty as provided in this section. If the licensee or mortgagee fails to make the release and deliver it to the administrator, the administrator may assess a penalty not to exceed fifty dollars for each day of delinquency after the fifteen days. The administrator may waive the penalty if the administrator finds the failure was not intentional and resulted from bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid error.

6. If a person in connection with a first mortgage loan has possession of an abstract of title and fails to deliver the abstract to the borrower within twenty calendar days of the borrower's request made by certified mail return receipt requested in connection with a proposed sale of the property, then the borrower may authorize the preparation of a new abstract of title to the property and the person failing to deliver the original abstract shall pay to the borrower the reasonable costs of preparation. If the borrower brings an action against the person failing to deliver to recover such payment and in the action recovers the payment, then the borrower shall also be entitled to recover attorney fees and court costs incurred in the action.

7. When the servicing of a first mortgage loan is transferred, sold, purchased, or accepted by a licensee or registrant, the licensee or registrant who is transferring or selling the servicing shall issue to the mortgagor, within five business days of the transfer, a notice which shall include at a minimum:

- a. The name and address of the licensee or registrant transferring or selling the servicing.
- b. The name and address of the licensee or registrant accepting or purchasing the servicing.
- c. The effective date of the transfer.
- d. A statement concerning the effect of the transfer on the terms and conditions of the mortgage.
- e. The address where payments are to be submitted for at least the next three months.
- f. The name and address of the licensee or registrant to whom questions related to the mortgage may be addressed.

89 Acts, ch 133, §9 HF 645  
NEW subsection 7

#### **535B.16 Notice to administrator.**

A licensee or registrant maintaining an office in the state shall notify the administrator in writing at least thirty days before closing or otherwise ceasing operations at any office in the state.

89 Acts, ch 133, §10 HF 645  
NEW section

## CHAPTER 536

### IOWA REGULATED LOAN ACT

#### 536.2 Application—fees.

Application for such license shall be in writing, under oath, and in the form prescribed by the superintendent, and shall contain the name and the address (both of the residence and place of business) of the applicant, and if the applicant is a copartnership or association, of every member thereof, and if a corporation, of each officer and director thereof; also the county and municipality with street and number, if any, of the place where the business of making loans under the provisions of this chapter is to be conducted and such further relevant information as the superintendent may require. Such applicant at the time of making such application shall pay to the superintendent the sum of fifty dollars if the liquid assets of the applicant are not in excess of twenty thousand dollars, and the sum of one hundred dollars if the liquid assets of the applicant are in excess of twenty thousand dollars, as a fee for investigating the application and the additional sum of one hundred twenty-five dollars if the liquid assets of the applicant are not in excess of twenty thousand dollars, and two hundred fifty dollars if the liquid assets of the applicant are in excess of twenty thousand dollars, as an annual license fee.

Every applicant shall also prove, in form satisfactory to the superintendent, that the applicant has available for the operation of such business at the place of business specified in the application, liquid assets of at least five thousand dollars, or that the applicant has at least the said amount actually in use in the conduct of such business at such place of business.

89 Acts, ch 257, §27 HF 234  
Unnumbered paragraph 1 amended

#### 536.16 Nonresident licensees—face-to-face solicitation.

Notwithstanding other provisions of this chapter to the contrary, a person who neither has an office physically located in this state nor engages in face-to-face solicitation in this state, if authorized by another state to make loans in that state at a rate of finance charge in excess of the rate provided in chapter 535, shall not be subject to the following provisions of this chapter:

1. Section 536.2 to the extent it requires payment of an annual license fee in excess of two hundred fifty dollars and requires a person to prove the person has any dollar amount of liquid assets or the use of any dollar amount in the conduct of the person's business at the licensed place of business.

2. Section 536.4, however, the superintendent may deny a license if upon investigation the superintendent determines that the financial responsibility, experience, character or general fitness of the person, or members, officers, or directors thereof, do not warrant the belief that the business will be operated lawfully, honestly, fairly and efficiently, within the purposes of this chapter.

3. Section 536.6 to the extent it requires a person to have any dollar amount of assets available for a licensed place of business.

4. Section 536.10 to the extent it requires the superintendent to make an examination of the affairs, place of business and records of the person on a periodic basis.

89 Acts, ch 257, §28 HF 234  
Subsection 1 amended

## CHAPTER 536A

## IOWA INDUSTRIAL LOAN LAW

**536A.7 Application for license.**

Applications for licenses to engage in the business of operating industrial loan companies shall be in writing on such forms as may be prescribed by the superintendent. The application shall give the name of the corporation, the location where the business is to be conducted, the street address of the place of business, the names and addresses of the officers and directors of the corporation and such other relevant information as the superintendent shall require. At the time of making such application the applicant shall pay to the superintendent the sum of fifty dollars to cover the cost of the investigation of the applicant. The applicant shall also pay to the superintendent the sum of two hundred fifty dollars as an annual license fee for the period ending December 31 next following the application; provided that if the license is granted after June 30 in any year, the license fee for the remainder of that year shall be one hundred twenty-five dollars and any license fee paid by the applicant in excess of that amount shall be refunded by the superintendent.

89 Acts, ch 257, §29 HF 234  
Section amended

**536A.23 Powers of industrial loan companies.**

No industrial loan company licensed under the provisions of this chapter shall have the power and authority to:

1. Charge, receive or collect interest at a rate exceeding ten cents on the hundred by the year, except that the interest may be computed when the note is made on the full amount of the cash advanced on the loan from the date of the note to the date of the final installment thereof, and the interest so computed may be included in the note, notwithstanding any agreement to pay the entire amount in installments; or the interest may be computed on the amount of the note and discounted or collected in advance when the loan is made, notwithstanding any agreement to pay the entire amount in installments. If the note is repayable in other than equal monthly installments, the interest may be an amount computed on the basis of the effective rates permitted as provided above; provided, however, there shall be no compounding of interest and when an interest rate as authorized herein is advertised, or negotiated for with a prospective borrower, with intent that it be computed by either of the two methods authorized herein, they being the "add on" method or the "discount" method, in such case such rate shall be further described as to the method of computation to be used, but interest computed by either method shall be stated to the borrower as provided in section 537.3210.

If a borrower elects to repay a loan secured by a mortgage or deed of trust upon real property which is a single-family or two-family dwelling or agricultural land at a date earlier than is required by the terms of the loan, the licensee shall be governed by section 535.9.

The limitation on interest rate which is contained in this subsection shall not apply to any loan in which the borrower is a corporation or investment trust or any other person who is referred to in section 535.2, subsection 2.

2. Charge, receive, or collect in advance, a service charge in excess of one dollar for each fifty dollars of the amount of the note, not to exceed a total of one hundred twenty dollars.

3. Require any borrower to purchase insurance from the lender as a condition for obtaining a loan. However, an industrial loan company may collect from the borrower, at the option of the borrower, and transmit the premiums charged for insuring real or personal property used by the borrower as security for a loan and provided that such insurance is obtained from a licensed insurance agent for an

insurance company authorized to do business in Iowa; and the premiums charged for insuring the life of one party on the loan in an amount not to exceed the total amount of the note or contract, including cash advance, interest and service charge, provided that no licensee shall require that the contract of life insurance be outstanding for more than the unpaid balance of the indebtedness and provided that such insurance is obtained from a licensed insurance agent for an insurance company authorized to do business in Iowa; and an industrial loan company may receive and transmit the premiums charged for accident and health insurance on the borrower, provided such insurance bears a reasonable relationship to the existing hazards or risk of loss, and the aggregate benefits of which shall not exceed the approximate amount of the contractual payments on the loan outstanding at the time of loss, and provided that such insurance is obtained from a licensed agent for an insurance company authorized to do business in Iowa. However, all life insurance rates in connection with industrial loans shall be subject to the rules and regulations of the insurance commissioner of the state of Iowa.

4. Industrial loan companies licensed under the provisions of this chapter may purchase notes, contracts, mortgages, accounts, receivables, leases and securities of a type and kind authorized by the superintendent.

5. In addition to the other charges authorized by this chapter, industrial loan companies licensed under this chapter may collect an appraisal fee on a loan secured by a mortgage or deed of trust upon real property, if the appraisal fee is bona fide, reasonable in amount, and not for purposes of circumvention or evasion of this chapter.

89 Acts, ch 295, §1 SF 462  
Subsection 2 stricken and rewritten

#### **536A.30 Nonresident licensees—face-to-face solicitation.**

Notwithstanding other provisions of this chapter to the contrary, a person which neither has an office physically located in this state nor engages in face-to-face solicitation in this state, if authorized by another state to make loans in that state at a rate of finance charge in excess of the rate provided in chapter 535, shall not be subject to the following provisions of this chapter:

1. Section 536A.7, to the extent it requires payment of an annual license fee in excess of two hundred fifty dollars.

2. Section 536A.8.

3. Section 536A.10, subsections 2, 3 and 4.

4. Section 536A.12, to the extent it requires a licensee to pay an annual license fee which, when combined with that required in section 536A.7, is in excess of ten dollars.

5. Section 536A.15, to the extent it requires the superintendent to make an examination and audit of the books, accounts and records of the licensee on a periodic basis.

89 Acts, ch 257, §30 HF 234  
Subsection 1 amended

## **CHAPTER 537**

### **CONSUMER CREDIT CODE**

#### **537.1302 Definition—Truth in Lending Act.**

As used in this chapter, "*Truth in Lending Act*" means title 1 of the Consumer Credit Protection Act, in subchapter 1 of chapter 41 of title 15 of the United States Code, as amended to and including January 1, 1989, and includes regulations issued pursuant to that Act prior to January 1, 1989.

89 Acts, ch 68, §1 HF 552  
Section amended

**537.2402 Finance charge for consumer loans pursuant to open-end credit.**

1. If authorized to make supervised loans, a creditor may contract for and receive a finance charge with respect to a loan pursuant to open-end credit not exceeding that permitted in this section.

2. For each billing cycle, a charge may be made which is a percentage of an amount not exceeding the greatest of the following:

a. The average daily balance of the open-end account in the billing cycle for which the charge is made, which is the sum of the amount unpaid each day during that cycle, divided by the number of days in that 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.

b. The balance of the open-end account at the beginning of the first day of the billing cycle, after deducting all payments and credits made in the cycle except credits attributable to purchases charged to the account during the cycle.

c. The median amount within a specified range including the balance of the open-end account not exceeding that permitted by paragraph "a" or "b". A charge may be made pursuant to this paragraph only if the organization, subject to classifications and differentiations it may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than eight percent of the charge on the median amount.

3. If the billing cycle is monthly, the charge shall not exceed an amount equal to one and sixty-five hundredths percent of the maximum amount pursuant to subsection 2. If the billing cycle is not monthly, the maximum charge for the billing cycle shall bear the same relation to the applicable monthly maximum charge as the number of days in the billing cycle bears to three hundred sixty-five divided by twelve. 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.

4. If the charge determined pursuant to subsection 3 is less than fifty cents, a charge may be made which does not exceed fifty cents if the billing cycle is monthly or longer, or the pro rata part of fifty cents which bears the same relation to fifty cents as the number of days in the billing cycle bears to three hundred sixty-five divided by twelve if the billing cycle is shorter than monthly.

5. Notwithstanding any other provision of this chapter or chapter 535, a creditor may contract for and receive a finance charge without limitation as to amount or rate with respect to a loan pursuant to open-end credit obtained pursuant to a credit card issued by the creditor which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer.

6. If the differential treatment of this section based on the number of persons honoring a credit card is found to be unconstitutional, a creditor may contract for and receive a finance charge not to exceed twenty-two percent per year for a loan pursuant to open-end credit.

89 Acts, ch 295, §2 SF 462  
Subsection 3 amended

**537.2501 Additional charges.**

1. In addition to the finance charge permitted by parts 2 and 4, a creditor may contract for and receive the following additional charges:

a. Official fees and taxes.

b. Charges for insurance as described in subsection 2.

c. Amounts actually paid or to be paid by the creditor for registration, certificate of title or license fees.

d. Annual charges, payable in advance, for the privilege of using a credit card which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, under an arrangement pursuant to which the debts resulting from the purchases or leases are payable to the card issuer.

e. With respect to a debt secured by an interest in land, the following "closing costs," provided they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this chapter:

(1) Fees or premiums for title examination, abstract of title, title insurance, or similar purposes including surveys.

(2) Fees for preparation of a deed, settlement statement, or other documents, if not paid to the creditor or a person related to the creditor.

(3) Escrows for future payments of taxes, including assessments for improvements, insurance and water, sewer and land rents.

(4) Fees for notarizing deeds and other documents, if not paid to the creditor or a person related to the creditor.

f. With respect to open-end credit pursuant to a credit card issued by the creditor which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, the parties may contract for an over-limit charge not to exceed ten dollars if the balance of the account exceeds the credit limit established pursuant to the agreement. The over-limit charge under this paragraph shall not be assessed again in a subsequent billing cycle unless in a subsequent billing cycle the account balance has been reduced below the credit limit.

If the differential treatment of this subsection based on the number of persons honoring a credit card is found to be unconstitutional, the parties may contract for the over-limit charge as described in this paragraph in any consumer credit transaction pursuant to open-end credit, and the other conditions relating to the over-limit charge shall remain in effect.

g. A surcharge of not more than ten dollars for each dishonored payment instrument provided that the fee is clearly and conspicuously disclosed in the cardholder agreement. However, the surcharge shall not be assessed against the maker if the reason for the dishonor of the instrument is that the maker has stopped payment pursuant to section 554.4403.

h. Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are authorized as permissible additional charges by rule adopted by the administrator.

2. An additional charge may be made for insurance written in connection with the transaction, as follows:

a. With respect to insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, if the creditor furnishes a clear, conspicuous and specific statement in writing to the consumer setting forth the cost of the insurance if obtained from or through the creditor and stating that the consumer may choose the person through whom the insurance is to be obtained.

b. With respect to consumer credit insurance providing life, accident, health, or unemployment coverage, if the insurance coverage is not required by the creditor, and this fact is clearly and conspicuously disclosed in writing to the consumer, and if, in order to obtain the insurance in connection with the extension of credit, the consumer gives specific dated and separately signed affirmative written indication of the consumer's desire to do so after written disclosure to the consumer of

the cost. However, credit unemployment insurance shall be permitted under this paragraph if all of the following conditions have been met:

(1) The insurance provides coverage beginning with the first day of unemployment. However, the policy may include a waiting period before the consumer may file a claim.

(2) The insurance shall be sold separately and shall be separately priced from any other insurance offered or sold at the same time. The credit unemployment insurance need not be sold separately or separately priced from other insurance offered if it is included as part of a mailed insurance offering by a credit card issuer to its credit cardholders. However, credit unemployment insurance shall not be sold in conjunction with an application for a credit card or for the renewal of a credit card.

(3) The premium rates have been affirmatively approved by the insurance division of the department of commerce. In approving or establishing the rates, the division shall review the insurance company's actuarial data to assure that the rates are fair and reasonable. The insurance commissioner shall either hire or contract with a qualified actuary to review the data. The insurance division shall obtain reimbursement from the insurance company for the cost of the actuarial review prior to approving the rates. In addition, the rates shall be made in accordance with the following provisions:

(a) Rates shall not be excessive, inadequate or unfairly discriminatory.

(b) Due consideration shall be given to all relevant factors within and outside this state but rates shall be deemed to be reasonable under this section and section 537.2501 if they reasonably may be expected to produce a ratio of fifty percent by dividing claims incurred by premiums earned.

3. With respect to open-end credit obtained pursuant to a credit card issued by the creditor which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, the creditor may contract for and receive any charge lawfully contained in a prior agreement between the consumer and a prior creditor from whom the creditor currently issuing the credit card acquired the credit card account, if the account was acquired in an arm's-length for-value sale from a nonrelated or nonaffiliated creditor. The creditor may charge any charge on new open-end credit accounts lawfully permitted in a prior agreement between a consumer and a prior creditor from whom the creditor currently issuing the credit card acquired the credit card accounts.

89 Acts, ch 68, §2, 3 HF 552; 89 Acts, ch 296, §75 SF 141

Subsection 1, NEW paragraphs f and g, and former paragraph f relettered as h  
NEW subsection 3

### **537.2502 Delinquency charges.**

1. With respect to a precomputed consumer credit transaction, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its due date, as originally scheduled or as deferred, in an amount not exceeding the greater of either of the following:

a. One and one-half percent of the unpaid amount of the installment, or a maximum of five dollars.

b. The deferral charge that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

2. A delinquency charge under subsection 1, paragraph "a," may be collected only once on an installment however long it remains in default. No delinquency charge may be collected with respect to a deferred installment unless the installment is not paid in full within ten days after its deferred due date. A delinquency charge may be collected at the time it accrues or at any time afterward.

3. No delinquency charge may be collected under subsection 1, paragraph "a", on an installment which is paid in full within ten days after its scheduled or deferred installment due date even though an earlier maturing installment or a delinquency or deferral charge on an earlier installment may not have been paid in full. For purposes of this subsection payments are applied first to current installments and then to delinquent installments.

4. With respect to open-end credit obtained pursuant to a credit card issued by the creditor which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, the parties may contract for a delinquency charge on any payment not paid in full within ten days after its due date, as originally scheduled or as deferred, in an amount not to exceed ten dollars.

5. A delinquency charge under subsection 4 may be collected only once on a payment however long it remains in default. No delinquency charge may be collected with respect to a deferred payment unless the payment is not paid in full within ten days after its deferred due date. A delinquency charge may be collected at the time it accrues or at any time afterward.

6. No delinquency charge may be collected under subsection 4 on a payment which is paid in full within ten days after its scheduled or deferred due date even though an earlier maturing payment or a delinquency or deferred charge on an earlier payment has not been paid in full. For purposes of this subsection, payments are applied first to amounts due for the current billing cycle and then to delinquent payments.

7. If the differential treatment of subsection 4 based on the number of persons honoring a credit card is found to be unconstitutional, the parties may contract for the delinquency charge as described in subsection 4 in any consumer credit transaction pursuant to open-end credit, and the other conditions provided in this section relating to delinquency charges remain in effect.

89 Acts, ch 68, §4 HF 552  
NEW subsections 4-7

### **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 exercising the option to purchase the property, and at what price, or by what formula or method the purchase price

will be determined. 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.

89 Acts, ch 128, §1 SF 486  
Subsection 8 stricken and rewritten

### **537.3608 Acquiring ownership.**

1. A lessor shall not offer a consumer rental purchase agreement in which fifty percent of all lease payments necessary to acquire ownership of the leased property exceeds the cash price of the leased property. When fifty percent of all lease payments made by a lessee equals the cash price of the property disclosed to the lessee pursuant to section 537.3605, subsection 9, the lessee shall acquire ownership of the leased property and the agreement shall terminate.

2. At any time after tendering an initial lease payment, a lessee may acquire ownership of the property that is the subject of the consumer rental purchase agreement by tendering an amount equal to the amount by which the cash price of the leased property exceeds fifty percent of all lease payments made by the lessee.

3. 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.

89 Acts, ch 128, §2 SF 486  
Section stricken and rewritten

### **537.3621 Damages.**

In case of a violation of a provision of this part with respect to a consumer rental purchase agreement, or a violation of the Iowa debt collection practices Act, article 7 of this chapter, where a debt arises in connection with 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.

89 Acts, ch 128, §3 SF 486  
Section amended

### **537.6201 Applicability.**

This part applies to all of the following:

1. Creditors engaged in consumer credit transactions and acts, practices or conduct involving consumer credit transactions to which this chapter applies pursuant to section 537.1201, but not to those licensed, certificated, or otherwise authorized to engage in business by chapter 524, 533, 534, 536 or 536A.

2. Debt collectors, as defined in section 537.7102, subsection 3, to whose acts, practices, or conduct this chapter applies pursuant to section 537.1201 if the total debt collected by a debt collector in the preceding calendar year exceeds twenty-five thousand dollars, or if not, if the total debt collected during the current calendar year exceeds twenty-five thousand dollars, but this part does not apply to those licensed, certified, or otherwise authorized to engage in business under chapter 524, 533, 534, 536, or 536A.

89 Acts, ch 68, §5 HF 552  
Subsection 2 amended

### **537.6202 Notification.**

1. Persons subject to this part shall file notification with the administrator within thirty days after commencing business in this state or within thirty days after enactment of this Act,\* whichever is applicable, and, thereafter, on or before January 31 of each year. The notification must state all of the following:

a. Name of the person.

b. Every name in which business is transacted if different from the name of the person.

c. Address of principal office, whether or not within this state.

d. Address of all offices or retail stores, if any, in this state at which consumer credit transactions are entered into or acts, practices or conduct involving consumer credit transactions are engaged in, or in the case of a person taking assignments of obligations, any offices or places of business within this state at which business is transacted or, in the case of debt collectors, any offices in this state from or at which debt collection is engaged in.

e. If consumer credit transactions or acts, practices or conduct involving consumer credit transactions or debt collection, are engaged in otherwise than at an office or retail store in this state and this chapter applies to such transactions, acts, practices or conduct, pursuant to section 537.1201, a brief description of the manner in which they are engaged in.

f. Address of designated agent upon whom service of process may be made in this state.

g. Whether or not supervised loans are made.

2. If information in a notification becomes inaccurate after filing, no further notification is required until the following January 31.

89 Acts, ch 68, §6 HF 552

\*April 27, 1989

Subsection 1, unnumbered paragraph 1 amended

### 537.6203 Fees.

1. A person required to file notification shall pay to the administrator an annual fee of ten dollars. The fee shall be paid with the filing of the first notification and on or before January 31 of each succeeding year.

2. A person required to file notification who is a seller, lessor, or lender and who is not an assignee shall pay an additional fee at the time and in the manner stated in subsection 1 of ten dollars for each one hundred thousand dollars, or part thereof exceeding ten thousand dollars, of the average unpaid balances, including unpaid scheduled periodic payments under consumer leases, of obligations arising from consumer credit transactions entered into or modified by the person in this state and held on the last day of each calendar month during the preceding calendar year and held either by the seller, lessor, or lender, or by an immediate or remote assignee who has not filed notification. The unpaid balances of assigned obligations held by an assignee who has not filed notifications are presumed to be the unpaid balances of the assigned obligations at the time of their assignment by the seller, lessor, or lender.

3. A person required to file notification who is an assignee shall pay an additional fee at the time and in the manner stated in subsection 1 of ten dollars for each one hundred thousand dollars, or part thereof exceeding ten thousand dollars, of the average unpaid balances including unpaid scheduled periodic payments payable by lessees, of obligations arising from consumer credit transactions entered into or modified in this state, taken by the person by assignment and held by the person on the last day of each calendar month during the preceding calendar year.

4. In addition to the penalties provided by section 537.6113, subsection 3, the administrator may collect a charge, established by rule, not exceeding twenty-five dollars from each person required to pay fees under this section who fails to pay the fees in full within thirty days after they are due.

5. Moneys collected under this section shall be deposited in a consumer credit administration fund in the state treasury and shall be used for the administration of chapter 537. The moneys are subject to warrant upon certification of the administrator and are appropriated for these purposes. Notwithstanding section 8.33, the moneys in the fund do not revert at the end of a fiscal period.

89 Acts, ch 68, §7 HF 552

Section stricken and rewritten

### 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, consumer rental purchase agreement, 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 in connection with a consumer rental purchase agreement, 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.

89 Acts, ch 128, §4 SF 486  
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 the debt collector 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 the debt collector's 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.

89 Acts, ch 296, §76 SF 141

Subsection 3, paragraph a, subparagraph (1) amended

## CHAPTER 537A

### CONTRACTS

#### 537A.4 Gaming contracts void—exceptions.

All promises, agreements, notes, bills, bonds, or other contracts, mortgages or other securities, when the whole or any part of the consideration thereof is for money or other valuable thing won or lost, laid, staked, or bet, at or upon any game of any kind or on any wager, are absolutely void and of no effect.

This section does not apply to a contract for the operation of or for the sale or rental of equipment for games of skill or games of chance, if both the contract and the games are in compliance with chapter 99B. This section does not apply to wagering under the pari-mutuel method of wagering authorized by chapter 99D. This section does not apply to the sale, purchase or redemption of a ticket or share in the state lottery in compliance with chapter 99E. This section does not apply to the sale, purchase, or redemption of any ticket or similar gambling device legally purchased in Indian lands within this state.

89 Acts, ch 231, §34 HF 490

Unnumbered paragraph 2 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; or the national bank for cooperatives established in the Agricultural Credit Act, Pub. L. No. 100-233.

89 Acts, ch 143, §1001 HF 533  
Subsection 9 amended

#### **542.2 Powers and duties of the department.**

The department may exercise general supervision over the business operations of grain dealers. The supervisory and regulatory powers authorized by this chapter shall be the responsibility of the warehouse bureau of the department. The department may inspect or cause to be inspected any grain dealer operating in this state and may require the filing of reports pertaining to the operation of the dealer's business. The department shall adopt rules to provide for the efficient administration and regulation of the provisions of this chapter, and may designate an employee of the department to act for the department in any details connected with such administration, including the issuance of licenses and approval of grain dealers' bonds in the name of the department.

89 Acts, ch 143, §101 HF 533  
Section 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 seventy-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 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 thirty-seven thousand five hundred 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. However, at any time the department may require 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 a certified public accountant if the department has good cause to believe that the net worth or current asset to current liability ratio of a licensee presents a danger to producers or sellers with whom the licensee deals. "Good cause" means that the department has evidence that the licensee issued checks on insufficient funds, evidence of a quality or quantity shortage in a warehouse facility, or evidence of violations of recordkeeping requirements. 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 one hundred 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 fifty 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 fifty 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 thirty-seven thousand five hundred 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 seventeen thousand five hundred 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. However, at any time the department may require 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 a certified public accountant if the department has good cause to believe that the net worth or current asset to current liability ratio of a licensee presents a danger to producers or sellers with whom the licensee deals. "Good cause" means that the department has evidence that the licensee issued checks on insufficient funds, evidence of a quality or quantity shortage in a warehouse facility, or evidence of violations of recordkeeping requirements. 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 one hundred 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 fifty 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 fifty 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.

89 Acts, ch 143, §201, 202, 301, 302, 401, 402 HF 533  
 Subsection 4, paragraphs a, b, and c amended  
 Subsection 5, paragraphs a, b, and c amended

#### **542.5 License.**

Upon the filing of the application and compliance with the terms and conditions of this chapter and rules of the department, the department shall issue a license to the applicant. The license shall terminate on the thirtieth of June of each year. A grain dealer's license may be renewed annually by the filing of a renewal fee and a renewal application on a form prescribed by the department. An application for renewal shall be received by the department before the thirtieth of June. A grain dealer license which has terminated may be reinstated by the department upon receipt of a proper renewal application, the renewal fee, and the reinstatement fee as provided in section 542.6 if filed within thirty days from the date of termination of the grain dealer license. The department may cancel a license upon request of the licensee unless a complaint or information is filed against the licensee alleging a violation of a provision of this chapter.

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.

The department may deny a license to an applicant if any of the following apply:

1. The applicant has caused liability to the Iowa grain depositors and sellers indemnity fund in regard to a license issued under this chapter or chapter 543, and the liability has not been discharged, settled, or satisfied.

2. The applicant is owned or controlled by a person who has caused liability to the fund through operations under a license issued under this chapter or chapter 543 and the liability has not been discharged, settled, or satisfied.

89 Acts, ch 143, §701 HF 533  
 NEW unnumbered paragraph 3

#### **542.9 Inspection of premises, books and records.**

The department may inspect the premises used by any grain dealer in the conduct of the dealer's business at any time, and the books, accounts, records, and papers of every grain dealer which pertain to grain purchases are subject to inspection by the department during ordinary business hours. The department shall cause the business premises and books, accounts, records, and papers of every grain dealer to be inspected not less than once during each twelve-month period, but not more than four times in a twenty-four month period without good

cause. The transporter of grain in transit shall possess bills of lading or other documents covering the grain, and shall present them to any law enforcement officer or to a person designated as an enforcement officer under section 542.13 on demand. If there is good cause to believe that a person is engaged without a license in the business of a grain dealer in this state, the department may inspect the books, papers, and records of the person which pertain to grain purchases.

If the grain dealer does not maintain a place of business in this state, the department is not required to inspect the business premises of the grain dealer, and the grain dealer shall submit all books, records and papers relating to grain transactions occurring within this state to the department for purposes of an inspection required or permitted under this section at any reasonable time and place, including the offices of the department during regular business hours, as ordered by the department or the administrator of the warehouse bureau.

89 Acts, ch 143, §101 HF 533  
Section amended

#### **542.10 Suspension or revocation—notice.**

The department may after hearing and upon information being filed with the department by the administrator of the warehouse bureau of the department or upon complaint filed by any person, suspend or revoke the license of any person licensed under this chapter for the violation of or failure to comply with the provisions of this chapter or any rule adopted under this chapter. An information or a verified complaint stating the grounds for suspension or revocation shall be filed with the department in triplicate. The department shall notify the licensee of the complaint and furnish the licensee with a copy of the information or the complaint and a copy of the order of the department fixing the time for a hearing, which time shall be at least five days from the date of notification. If the department determines that the public good requires immediate action, the department may, upon the filing of the information or the complaint and without hearing, temporarily suspend a license pending the determination by it of the complaint. Judicial review of the actions of the department may be sought in accordance with the terms of the Iowa administrative procedure Act.

The department may revoke a grain dealer's license upon information without hearing if a grain dealer fails to submit to inspection.

89 Acts, ch 143, §101 HF 533  
Section amended

#### **542.13 Enforcement officers.**

The department may designate by resolution certain of its employees in the warehouse bureau to be enforcement officers. Each person so designated shall have the authority of a peace officer to make arrests for violations of this chapter.

89 Acts, ch 143, §101 HF 533  
Section 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 fifty 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.

89 Acts, ch 143, §403 HF 533  
Subsection 7 amended

#### 542.16 Confidentiality of records.

Notwithstanding chapter 22, all financial statements of grain dealers under this chapter shall be kept confidential by the department and its agents and employees and are not subject to disclosure except as follows:

1. Upon waiver by the licensee.
2. In actions or administrative proceedings commenced under this chapter or chapter 543.
3. Disclosure to the Iowa grain indemnity fund board in regard to licensees who present liability to the fund.
4. When required by subpoena or court order.
5. Disclosure to law enforcement agencies in regard to the detection and prosecution of public offenses.
6. When released to a bonding company approved by the department, or released to the United States department of agriculture or any of its divisions.
7. Where released at the request of the Iowa board of accountancy for licensee review and discipline in accordance with chapters 116 and 258A and subject to the confidentiality requirements of section 258A.6.

89 Acts, ch 143, §601 HF 533  
NEW subsection 3 and former subsections 3-6 renumbered as 4-7

**542.18 Bonded grain sellers.** Repealed by 89 Acts, ch 143, §1201. HF 533

## CHAPTER 542A

### GRAIN BARGAINING AGENTS

#### 542A.7 Suspension or revocation of permit.

The department may after hearing and upon information being filed with the department by the administrator of the warehouse bureau of the department or upon complaint filed by any person, suspend or revoke a bargaining agent permit issued under this chapter for the violation of or failure to comply with the provisions of this chapter or any rule adopted thereunder. An information or a verified complaint stating the grounds for suspension or revocation shall be filed with the department in triplicate. The department shall notify the permittee of the complaint and furnish the permittee with a copy of the information or the complaint and a copy of the order of the department fixing the time for a hearing, which time shall be at least five days from the date of notification. If the department determines that the public good requires immediate action, the department may, upon the filing of the information or the complaint and without hearing, temporarily suspend a permit pending the determination by it of the complaint. Judicial review of the actions of the department may be sought in accordance with the terms of the Iowa administrative procedure Act.

The department may revoke a bargaining agent permit upon information without hearing if the permittee fails to have sufficient bond on file with the department, or if the permittee fails to submit to inspection.

The department, after a hearing, may suspend or revoke a bargaining agent's permit if the permittee is licensed as a grain dealer under chapter 542 and the permittee's grain dealer license is under suspension or has been revoked pursuant to section 542.10.

Upon revocation of a permit, any claim of a creditor shall be filed against the former permittee within one hundred twenty days after the date of revocation. The department shall provide for giving notice to all agricultural producers under contract with the person holding the bargaining agent permit of the revocation of the permit.

89 Acts, ch 143, §101 HF 533  
Section amended

## CHAPTER 543

### WAREHOUSES FOR AGRICULTURAL PRODUCTS

#### 543.1 Definitions.

As used in this chapter:

1. "*Agricultural product*" shall mean any product of agricultural activity suitable for storage in quantity, including refined or unrefined sugar and canned agricultural products and shall also mean any product intended for consumption in the production of other agricultural products, such as stock salt, binding twine, bran, cracked corn, soybean meal, commercial feeds, and cottonseed meal.

2. "*Bond*" means a bond issued by a surety company or an irrevocable letter of credit issued by a financial institution described in subsection 25.

3. "*Bulk grain*" shall mean grain which is not contained in sacks.

4. "*Credit-sale contract*" means a contract for the sale of grain pursuant to which the sale price is to be paid more than thirty days after the delivery of the grain to the buyer, and includes but is not limited to those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.

5. "*Department*" means the department of agriculture and land stewardship.

6. "*Depositor*" means any person who deposits an agricultural product in a warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding warehouse receipt, or who is lawfully entitled to possession of the agricultural product.

7. "*Financial institution*" means a bank or savings and loan association authorized by the state of Iowa or by the laws of the United States, which is a member of the federal deposit insurance corporation or the federal savings and loan insurance corporation, respectively; or the national bank for cooperatives established in the Agricultural Credit Act, Pub. L. No. 100-233.

8. "*Grain*" shall mean wheat, corn, oats, barley, rye, flaxseed, field peas, soybeans, grain sorghums, spelt, and similar agricultural products, as defined in the Grain Standards Act.

9. "*Grain bank*" means grain owned by a depositor and held temporarily by the warehouse operator for use in the formulation of feed or to be processed and returned to the depositor on demand.

10. "*Grain Standards Act*" means the United States Grain Standards Act, 7 U.S.C. ch. 3.

11. "*Incidental warehouse operator*" means a person regulated under chapter 198 whose grain storage capacity does not exceed twenty-five thousand bushels which is used exclusively for grain owned or grain which will be returned to the depositor for use in a feeding operation or as an ingredient in a customer-formula feed, as defined in section 198.1.

12. "*License*" means a license issued under this chapter.

13. "*Licensed warehouse*" shall mean a warehouse for the operation of which the department has issued a license in accordance with the provisions of section 543.6.

14. "*Licensed warehouse operator*" shall mean a warehouse operator who has obtained a license for the operation of a warehouse under the provisions of section 543.6.

15. "*Official grain standards*" means the standards of quality and condition of grain which establishes the grade, fixed and established by the secretary of agriculture under the Grain Standards Act.

16. "*Open storage*" means grain or agricultural products which are received by a warehouse operator from a depositor for which warehouse receipts have not been issued or a purchase made and the records documented accordingly.

17. "*Person*" shall mean an individual, corporation, partnership, or two or more persons having a joint or common interest in the same venture, and, except with respect to the privilege of operating a warehouse under this chapter, shall include the United States or Iowa state government, or any subdivision or agency of either.

18. "*Receiving and loadout charge*" shall mean the charge made by the warehouse operator for receiving grain into and loading grain from the warehouse, exclusive of the warehouse operator's other charges.

19. "*Scale weight ticket*" means a load slip or other evidence, other than a receipt, given to a depositor by a warehouse operator licensed under this chapter upon initial delivery of the agricultural product to the warehouse.

20. "*Station*" means a warehouse located more than three miles from the central office of the warehouse.

21. "*Storage*" means any grain or other agricultural products that have been received and have come under care, custody or control of a warehouse operator either for the depositor for which a contract of purchase has not been negotiated or for the warehouse operator operating the facility.

22. "*Warehouse*" shall mean any building, structure, or other protected enclosure in this state used or usable for the storage of agricultural products. Buildings

used in connection with the operation of the warehouse shall be deemed to be a part of the warehouse.

23. “*Warehouse operator*” means a person engaged in the business of operating or controlling a warehouse for the storing, shipping, handling or processing of agricultural products, but does not include an incidental warehouse operator.

24. “*Warehouse operator’s obligation*” means a sufficient quantity and quality of grain or other products for which a warehouse operator is licensed including company owned grain and grain of depositors as the warehouse operator’s records indicate. For an unlicensed warehouse operator it means a sufficient quantity and quality to cover company owned and all deposits of grain for which actual payment has not been made. At no time may a warehouse operator have less grain or other agricultural products in the warehouse than the obligations to depositors, as determined by investigation of the warehouse operator’s records.

25. “*Unlicensed warehouse operator*” means a warehouse operator who retains grain in the warehouse not to exceed thirty days and is not licensed under the provisions of this chapter or Title VII, U.S.C.

89 Acts, ch 143, §1002, 1101 HF 533

Subsections renumbered to alphabetize, and subsections 7 and 10 amended

### **543.3 Appointment of department as receiver.**

1. The department in its discretion may, following summary suspension of a license under section 543.10, or following a suspension or revocation of a license as otherwise provided in section 543.10 or 543.11, file a verified petition in the district court requesting that the department be appointed as a receiver to take custody of commodities stored in the licensee’s warehouse and to provide for the disposition of those assets in the manner provided in this chapter and under the supervision of the court. The petition shall be filed in the county in which the warehouse is located. The district court shall appoint the department as receiver. Upon the filing of the petition the court shall issue ex parte such temporary orders as may be necessary to preserve or protect the assets in receivership, or the value thereof, and the rights of depositors, until a plan of disposition is approved.

2. A petition filed by the department under subsection 1 shall be accompanied by the department’s plan for disposition of stored commodities. The plan may provide for the pro rata delivery of part or all of the stored commodities to depositors holding warehouse receipts or unpriced scale weight tickets, or may provide for the sale under the supervision of the department of part or all of the stored commodities for the benefit of those depositors, or may provide for any combination thereof, as the department in its discretion determines to be necessary to minimize losses.

3. When a petition is filed by the department under subsection 1 the clerk of court shall set a date for hearing on the department’s proposed plan of disposition at a time not less than ten nor more than fifteen days after the date the petition is filed. Copies of the petition, the notice of hearing, and the department’s plan of disposition shall be served upon the licensee and upon the issuer of a deficiency bond or of an irrevocable letter of credit pursuant to section 543.6 in the manner required for service of an original notice. A delay in effecting service upon the licensee or issuer is not cause for denying the appointment of a receiver and is not grounds for invalidating any action or proceeding in connection with the appointment.

4. The department shall cause a copy of each of the documents served upon the licensee under subsection 3 to be mailed by ordinary mail to every person holding a warehouse receipt or unpriced scale weight ticket issued by the licensee, as determined by the records of the licensee or the records of the department. The failure of any person referred to in this subsection to receive the required notification shall not invalidate the proceedings on the petition for the appointment of a receiver or any portion thereof. Persons referred to in this subsection are not parties to the action unless admitted by the court upon application therefor.

5. When appointed as a receiver under this chapter, the department shall cause notification of the appointment to be published once each week for two consecutive weeks in a newspaper of general circulation in each of the counties in which the licensee maintains a business location, and in a newspaper of general circulation in this state.

6. The department may designate an employee of the department to appear on behalf of the department in any proceedings before the court with respect to the receivership, and to exercise the functions of the department as receiver under this section and section 543.4, except that the department shall determine whether or not to petition for appointment as receiver, shall approve the proposed plan for disposition of stored commodities, shall approve the proposed plan for distribution of any cash proceeds, and shall approve the proposed final report.

7. The actions of the department in connection with petitioning for appointment as a receiver, and all actions pursuant to such appointment shall not be subject to the provisions of the administrative procedure Act.

8. A person employed or appointed by the department and carrying out the duties of the department acting as receiver under this chapter shall be deemed to be an employee of the state as defined in section 25A.2. Chapter 25A is applicable to any claim as defined in section 25A.2 against the person carrying out the duties of the department acting as receiver.

89 Acts, ch 143, §501 HF 533  
NEW subsection 8

#### **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 or appointed as a merchandiser is deemed to be an employee of the state as defined in section 25A.2 and chapter 25A is applicable to any claim as defined in section 25A.2 against the person acting as a merchandiser. 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 bureau 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.

89 Acts, ch 143, §101, 502 HF 533

Subsection 3, unnumbered paragraph 1 and paragraph c amended

#### **543.6 Issuance of license and financial responsibility.**

1. The department, upon application to it, may issue to a warehouse operator or to a person about to become a warehouse operator a license for the operation of a warehouse in accordance with this chapter and the rules adopted by the department under section 543.5. A single license to operate two or more warehouses located anywhere within the state 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 generally accepted accounting principles. Assets shall be shown at original cost less depreciation. Upon written request, the department 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. However, at any time the department may require 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 a certified public accountant if the department has good cause to believe that the net worth or current asset to current liability ratio of a licensee presents a danger to producers or sellers with whom the licensee deals. "Good cause" means that the department has evidence that the licensee issued checks on insufficient funds, evidence of a quality or quantity shortage in a warehouse facility, or evidence of violations of recordkeeping requirements.

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. However, at any time the department may require 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 a certified public accountant if the department has good cause to believe that the net worth or current asset to current liability ratio of a licensee presents a danger to producers or sellers with whom the licensee deals. "Good cause" means that the

department has evidence that the licensee issued checks on insufficient funds, evidence of a quality or quantity shortage in a warehouse facility, or evidence of violations of recordkeeping requirements.

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. The department may deny a license to an applicant if any of the following apply:

a. The applicant has caused liability to the Iowa grain depositors and sellers indemnity fund through operations under a license issued under this chapter or chapter 542, and the liability has not been discharged, settled, or satisfied.

b. The applicant is owned or controlled by a person who has caused liability to the fund through operations under a license issued under this chapter or chapter 542, and the liability has not been discharged, settled, or satisfied.

9. 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.

89 Acts, ch 143, §303, 304, 702, 801, 802 HF 533  
 Subsections 1 and 3 amended  
 Subsection 4, paragraph b amended  
 Subsection 5, paragraph b amended  
 NEW subsection 8 and subsequent subsection renumbered

#### **543.7 Application for license.**

Each application for a license or licenses shall be in writing subscribed and sworn to by the applicant or a duly authorized representative of the applicant. In addition to any other information required by rule of the department the application shall include the following:

1. The name of the individual, partnership, or corporation making the application, the names of all partners if applicant is a partnership, and the names and titles of the principal officers if applicant is a corporation.

2. The principal office or place of business of the applicant.

3. A general description of each warehouse as to storage capacity, type of construction, mechanical equipment, if any, and condition.

4. The approximate location of each warehouse.

5. The type and quantity of agricultural product, or products intended to be stored in each warehouse.

6. A complete financial statement for use of the department in the administration of this chapter, as required by section 543.6.

7. A tariff on a form to be prescribed by the department for storage, receiving and loadout charges.

89 Acts, ch 143, §803 HF 533  
 Subsection 7 amended

#### **543.10 Suspension or revocation of license.**

The department is empowered after hearing before it and upon information being filed with the department by the duly authorized head of the warehouse bureau of the department or upon complaint filed by any person to suspend or revoke the license of anyone licensed under this chapter for the violation of or failure to comply with the provisions of this chapter or any rule made in pursuance of the authority therefor granted under this chapter. An information or

a verified complaint stating the grounds for suspension or revocation shall be filed with the department in triplicate, and thereupon the department shall serve the licensee complained against with a copy of the information or the complaint and a copy of the order of the department fixing the time for hearing thereon, which time shall be at least ten days from the date of service.

If upon the filing of the information or complaint the department finds that the licensee has failed to meet the warehouse operator's obligation or otherwise has violated or failed to comply with the provisions of this chapter or any rule promulgated under this chapter, and if the department finds that the public health, safety or welfare imperatively requires emergency action, then the department without hearing may order a summary suspension of the license in the manner provided in section 17A.18. When so ordered, a copy of the order of suspension shall be served upon the licensee at the time the information or complaint is served as provided in this section.

Judicial review of the actions of the department may be sought in accordance with the terms of the Iowa administrative procedure Act.

89 Acts, ch 143, §101 HF 533  
Section amended

#### **543.15 Insurance required—exception.**

All agricultural products in storage in a licensed warehouse and all agricultural products which have been deposited temporarily in a licensed warehouse pending storage or for purposes other than storage, shall be kept fully insured by the warehouse operator for the current value of the agricultural products against loss by fire, inherent explosion, or windstorm.

The insurance shall be carried in an insurance company or companies authorized to do business in this state, and evidence of the insurance coverage in a form approved by the department shall be filed with the department. An insurance policy shall not be canceled by the insurance company on less than ninety days' notice by certified mail to the department and the principal unless the policy is being replaced with another policy and evidence of the new policy is filed with the department at the time of cancellation of the policy on file. The insurance shall be provided by, and carried in the name of, the warehouse operator. However, whenever the department shall receive notice from an insurance company that it has canceled the insurance of a licensed warehouse, the department shall automatically suspend the warehouse license if replacement insurance is not received by the department within seventy-five days of receipt of the notice of cancellation. The department shall cause an inspection of the licensed warehouse immediately at the end of the seventy-five day period. If replacement insurance is not filed within another ten days following suspension, the warehouse license shall be automatically revoked. When a license is revoked, the department shall notify each holder of an outstanding warehouse receipt and all known persons who have grain retained in open storage of the revocation. The department shall further notify each receipt holder and all known persons who have grain retained in open storage that the grain must be removed from the warehouse not later than the thirtieth day following the revocation. The notice shall be sent by ordinary mail to the last known address of each person having grain in storage as provided in this subsection. Claimants against the insurance have precedence in the following order:

1. Holders of warehouse receipts other than the warehouse operator and owners of bulk grain other than the warehouse operator.
2. Owners of all other agricultural products as their interests appear.
3. Warehouse operators who have warehouse receipts.
4. Warehouse operators owners of bulk grain.

However, notwithstanding the insurance requirements set forth in this section, a licensed warehouse may exclude from the insurance coverage stored grain to

which title is fully vested in the United States government or any of its subdivisions or agencies, provided that the licensed warehouse has on file with the United States government or any of its subdivisions or agencies a current and accepted uninsured storage rate under the provisions of their uniform grain storage agreement. The licensed warehouse shall file a copy of the current uninsured tariff rate with the department immediately upon acceptance of the uninsured rate by the United States government or any of its subdivisions or agencies.

89 Acts, ch 143, §804 HF 533  
Unnumbered paragraph 1 amended and divided

#### **543.24 Confidentiality of records.**

Notwithstanding the provisions of chapter 22, all financial statements of warehouse operators under this chapter shall be kept confidential by the department and its agents and employees and are not subject to disclosure except as follows:

1. Upon waiver by the licensee.
2. In actions or administrative proceedings commenced under this chapter or chapter 542.
3. Disclosure to the Iowa grain indemnity fund board in regard to licensees who present liability to the fund.
4. When required by subpoena or other court orders.
5. Disclosure to law enforcement agencies in regards to the detection and prosecution of public offenses.
6. Where released to a bonding company approved by the department or to the United States department of agriculture or any of their divisions.
7. Where released at the request of the Iowa board of accountancy for licensee review and discipline in accordance with chapters 116 and 258A and subject to the confidentiality requirements of section 258A.6.

89 Acts, ch 143, §602 HF 533  
NEW subsection 3 and former subsections 3-6 renumbered as 4-7

#### **543.39 Grain stored in another warehouse.**

A licensed warehouse operator may store grain in any other warehouse in Iowa licensed in accordance with section 543.6 or the United States Warehouse Act, 7 U.S.C. ch. 10, subject to the following conditions:

1. The warehouse operator must obtain from such warehouse operator a nonnegotiable warehouse receipt and such receipt must show clearly the following notation: "Held in trust for depositors of" (name of original receiving warehouse).
2. When the warehouse operator begins to use the additional facilities described in this section, the operator must have sufficient net worth under section 543.6 or provide a deficiency bond or an irrevocable letter of credit to cover the increase in the operator's gross capacity.
3. A licensed warehouse operator shall not accept grain for storage from another licensed warehouse operator while such warehouse operator has grain stored elsewhere under the provisions of this section.

89 Acts, ch 143, §1102 HF 533  
Unnumbered paragraph 1 amended



c. Grain purchased under a credit sale contract entered into on or before the date of delivery.

The grain dealer shall forward the per-bushel fee to the department on a quarterly basis in the manner and using the forms prescribed by the department. A licensee is delinquent if the licensee fails to submit the full fee or quarterly forms when due, or if upon examination, an underpayment of the fee is found by the department. The grain dealer is subject to a penalty of ten dollars for each day the grain dealer is delinquent or an amount equal to the amount of the deficiency, whichever is less. However, a licensee who fails to submit the full fee or quarterly forms when due, is subject to a minimum payment of ten dollars. The department may establish and apply a margin of error in determining whether a grain dealer is delinquent. If the per-bushel fee and any penalty due have not been received by the department within thirty days after notice by the department, the grain dealer'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. Payment of the full annual fee shall be made before a grain dealer's or warehouse operator's license is issued or renewed. If a licensee amends its license during the fiscal year for which an annual fee was paid, and the licensing entity remains the same, the licensee is required to pay a further fee only if the amendment changes the licensee's class from class 2 to class 1.

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.

7. A grain dealer may choose to pass on the cost of a per-bushel fee to the sellers by an itemized discount noted on the settlement sheet. However, if the per-bushel fee is not in effect, no grain dealer shall make such a discount on the purchase of grain. A discount made nominally for the per-bushel fee while the fee is not in effect is grounds for license suspension and revocation under chapter 542.

#### 543A.4 Indemnity fund board.

1. The Iowa grain indemnity fund board is established to advise the department on matters relating to the fund and to perform the duties provided 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.

2. The duties of the board include the review and determination of claims, and the review and approval of administrative costs of the fund. To carry out these duties, the board has the power to adopt rules regarding its organization and procedures for determining claims. Further, the board shall approve rules proposed by the department for the administration of the per-bushel fee prior to their adoption by the department. The board may provide comment and advice to the department in regard to the department's administration of chapters 542 and 543 where the department's policies and rules may affect the exposure of the fund to liability. However, the board shall not become actively involved in a determination by the department as to whether disciplinary action is to be taken against a particular licensee. The board is not a forum for review or appeal in regard to any particular action taken by the department against a licensee.

3. The department through the grain warehouse bureau shall perform the administrative functions necessary for the operation of the board and the fund. Administrative costs approved by the board shall be paid from the fund. The rules of the department shall contain the rules of the board adopted for its organization and its procedures. The department shall adopt rules for the administration of the per-bushel fee upon the board's approval of the rules proposed by the department. The secretary of agriculture, as president of the board as well as head of the department of agriculture and land stewardship, shall administer the department so as to minimize the risk of loss to the fund while protecting interests of depositors and sellers of grain. Policies and rules for the administration of chapters 542 and 543 which, as determined by the secretary of agriculture, may affect the exposure of the fund, shall be presented to the board for comment prior to their adoption by the department. The department shall make reports to the board in regard to licensee investigations which may result in disciplinary action against a licensee and exposure of the fund. The reports may be discussed by the board in closed session pursuant to section 21.5, and are confidential. In making the report, the department shall make available to the board records of licensees which are otherwise confidential under section 22.7, 542.16, or 543.24. However, a determination to take disciplinary action against a particular licensee shall be made exclusively by the department. A report to the board is not a prerequisite to disciplinary action against a licensee. Review of any action against a licensee,

whether or not relating to the fund, shall be made exclusively through the department.

89 Acts, ch 143, §906 HF 533  
NEW unnumbered paragraphs 2 and 3 numbered as subsections

#### 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 purchased grain as defined in section 543A.3. Until the per-bushel fee is adjusted or waived as provided in this section, the per-bushel fee is one-quarter cent on all purchased grain.

2. If, at the end of any three-month period, 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 and the fees are not assessable or owing. 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.

89 Acts, ch 143, §907 HF 533  
Subsection 1 amended

#### 543A.6 Claims against fund.

1. *Persons who may file claims—time of filing.* A depositor or seller may file a claim 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 incurrence date, which is the earlier of the following:

a. The revocation, termination, or cancellation of the license of the grain dealer or warehouse operator.

b. The filing of a petition in bankruptcy by a grain dealer or warehouse operator.

To be timely, a claim shall be filed within one hundred twenty days of the incurrence date.

2. *Notice.* The department shall cause notice of the opening of the claim period to be published once each week for two consecutive weeks in a newspaper of general circulation in each of the counties in which the licensee maintains a business location and in a newspaper of general circulation within the state. The notice shall state the name and address of the licensee and the claim incurrence date. The notice shall also state that any claims against the fund on account of the licensee shall be sent by ordinary mail to the department within one hundred twenty days after the incurrence date, and that the failure to make a timely claim relieves the fund from liability to the claimant. This notice may be incorporated by the department with a notice required by section 542.12 or 543.14.

3. *Determination of eligible claims.* The board shall determine a claim to be eligible for payment from the fund if the board finds all of the following:

a. That the claim was timely filed.

- b. That the incurrence date was on or after May 15, 1986.
  - c. That the claimant qualifies as a depositor or seller.
  - d. That the claim derives from a covered transaction. For purposes of this paragraph, a claim derives from a covered transaction if the claimant is a seller who transferred title to the grain to the grain dealer other than by credit sale contract within six months of the incurrence date, or if the claimant is a depositor who delivered the grain to the warehouse operator.
  - e. That there is adequate documentation to establish the existence of a claim and to determine the amount of the loss.
4. *Value of loss—warehouse claims.* 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 for storage to the licensed warehouse operator. If the department has been appointed by the court as receiver of the grain assets of the warehouse operator, the value shall be presumed to be as stated in the plan of disposition approved by the court. If the warehouse operator has filed a petition in bankruptcy, the value shall be presumed to be based upon the fair market price, free-on-board from the site of the warehouse operator, being paid to producers for grain by the grain terminal operator nearest the warehouse operator on the date the petition was filed. If there is neither a department receivership nor a bankruptcy filing, the value shall be presumed to be based upon the fair market price, free-on-board from the site of the warehouse operator, being paid to producers for grain by the grain terminal operator nearest the warehouse operator on the date of license revocation or cancellation. If more than one date applies to a claim, the board may choose between the two. However, the board may accept an alternative valuation of a claim upon a showing of just cause by the depositor or department. 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.
5. *Value of loss—grain dealer claims.* 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. If the sold grain was unpriced, the value of a claim shall be presumed to be based upon the fair market price, free-on-board from the site of the grain dealer, being paid to producers for grain by the grain terminal operator nearest the grain dealer on the date of the license revocation or cancellation or the filing of a petition in bankruptcy. If more than one date applies to a claim, the board may choose between the two. However, the board may accept an alternative valuation of a claim upon a showing of just cause by the seller or department. All sellers 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 the time of payment from the fund.
6. *Procedure—appeal.* The board, through the department, shall provide for notice to each depositor and seller upon its determination of eligibility and value of loss. Within twenty days of the notice, the depositor or seller may request a hearing for the review of either determination. The request shall be made in the manner provided by the board. The hearing and any further appeal shall be conducted as a contested case subject to chapter 17A. 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.
7. *Payment of claims.* Upon a determination that the claim is eligible for payment, the board shall provide for payment of ninety percent of the loss, as determined under subsection 4, but not more than one hundred fifty thousand dollars per claimant. If at any time the board determines that there are

insufficient funds to make payment of all claims, the board may order that payment be deferred on specified claims. The department, upon the board's instruction, shall hold those claims for payment until the board determines that the fund again contains sufficient assets.

8. *Subrogation of fund.* 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.

89 Acts, ch 143, §908 HF 533  
Section amended

## CHAPTER 545

### IOWA UNIFORM LIMITED PARTNERSHIP ACT

#### 545.102 Name.

The name of each limited partnership as set forth in its certificate of limited partnership:

1. Shall contain the words "limited partnership" or the abbreviation "L.P."
2. Shall not contain the name of a limited partner unless either or both of the following apply:
  - a. That name is also the name of a general partner or the corporate name of a corporate general partner.
  - b. The business of the limited partnership had been carried on under that name before admission of that limited partner.
3. Shall not contain any word or phrase indicating or implying that the limited partnership is organized other than for a purpose stated in its certificate of limited partnership.
4. Shall be distinguishable upon the records of the secretary of state from the name of a corporation or limited partnership organized under the law of this state or licensed or registered as a foreign corporation or foreign limited partnership in this state or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, without the written consent of the corporation or limited partnership, which consent shall be filed with the secretary of state, and provided the name is not identical.
5. Shall not contain either the word "corporation" or the word "incorporated" or an abbreviation of either.

89 Acts, ch 288, §194 SF 502  
1989 amendments to subsection 4 effective December 31, 1989; 89 Acts, ch 288, §196 SF 502  
Subsection 4 stricken and rewritten

## CHAPTER 547

### CONDUCTING BUSINESS UNDER TRADE NAME

#### 547.1 Use of trade name—verified statement required.

A person or copartnership shall not engage in or conduct a business under a trade name, or an assumed name of a character other than the true surname of each person owning or having an interest in the business, unless the person first records with the county recorder of the county in which the business is to be conducted a verified statement showing the name, post-office address, and

residence address of each person owning or having an interest in the business, and the address where the business is to be conducted.

89 Acts, ch 102, §3 SF 367  
Section amended

#### **547.2 Change in statement.**

A like verified statement shall be recorded of any change in ownership of the business, or persons interested in the business and the original owners are liable for all obligations until the certificate of change is recorded.

89 Acts, ch 102, §4 SF 367  
Section amended

#### **547.3 Fee for recording.**

The county recorder shall charge and receive a fee in the amount specified in section 331.604 for each verified statement recorded under this chapter.

89 Acts, ch 102, §5 SF 367  
Section amended

#### **547.6 County recorder to submit monthly list of filings.**

A county recorder shall within ten days of the end of each calendar month submit to the secretary of state a list of persons currently covered by a verified statement or certificate of change filed in the county pursuant to this chapter. The monthly list shall contain only the verified statements and certificates of change filed during the preceding month. The monthly list submitted shall contain the information required to be filed by section 547.1 for each person listed.

89 Acts, ch 92, §1 HF 684  
NEW section

## CHAPTER 554

### UNIFORM COMMERCIAL CODE

#### **554.1201 General definitions.**

Subject to additional definitions contained in the subsequent Articles of this chapter which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this chapter:

1. "*Action*" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.
2. "*Aggrieved party*" means a party entitled to resort to a remedy.
3. "*Agreement*" means the 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 as provided in this chapter (sections 554.1205 and 554.2208). Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (section 554.1103). (Compare "*Contract*".)
4. "*Bank*" means any person engaged in the business of banking.
5. "*Bearer*" means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.
6. "*Bill of lading*" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.
7. "*Branch*" includes a separately incorporated foreign branch of a bank.

8. "*Burden of establishing*" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

9. "*Buyer in ordinary course of business*" means a person who in good faith and without knowledge that the sale to that person is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

10. "*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. A printed heading in capitals (as: "Nonnegotiable Bill of Lading") is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

11. "*Contract*" means the total legal obligation which results from the parties' agreement as affected by this chapter and any other applicable rules of law. (Compare "Agreement".)

12. "*Creditor*" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

13. "*Defendant*" includes a person in the position of defendant in a cross-action or counterclaim.

14. "*Delivery*" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

15. "*Document of title*" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

16. "*Fault*" means wrongful act, omission or breach.

17. "*Fungible*" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this chapter to the extent that under a particular agreement or document unlike units are treated as equivalents.

18. "*Genuine*" means free of forgery or counterfeiting.

19. "*Good faith*" means honesty in fact in the conduct or transaction concerned.

20. "*Holder*" means a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued, or endorsed to that person or to that person's order or to bearer or in blank.

21. To "*honor*" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

22. "*Insolvency proceedings*" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

23. A person is “*insolvent*” who either has ceased to pay that person’s debts in the ordinary course of business or cannot pay that person’s debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

24. “*Money*” means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

25. A person has “*notice*” of a fact when

- a. the person has actual knowledge of it; or
- b. the person has received a notice or notification of it; or

c. from all the facts and circumstances known to the person at the time in question the person has reason to know that it exists. A person “*knows*” or has “*knowledge*” of a fact when that person has actual knowledge of it. “*Discover*” or “*learn*” or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this chapter.

26. A person “*notifies*” or “*gives*” a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person “*receives*” a notice or notification when

- a. it comes to that person’s attention; or
- b. it is duly delivered at the place of business through which the contract was made or at any other place held out by that person as the place for receipt of such communications.

27. Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to that individual’s attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of that individual’s regular duties or unless the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

28. “*Organization*” includes a corporation, government or governmental sub-division or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

29. “*Party*”, as distinct from “*third party*”, means a person who has engaged in a transaction or made an agreement within this chapter.

30. “*Person*” includes an individual or an organization (See section 554.1102).

31. “*Presumption*” or “*presumed*” 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.

32. “*Purchase*” means any voluntary transaction creating an interest in property, including taking by sale, discount, negotiation, mortgage, pledge, voluntary lien, issue, reissue or gift.

33. “*Purchaser*” means a person who takes by purchase.

34. “*Remedy*” means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

35. “*Representative*” includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

36. “*Rights*” includes remedies.

37. “*Security interest*” means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 554.2401) is limited in effect to a reservation of a “security interest”. The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under section 554.2401 is not a “security interest”, but a buyer may also acquire a “security interest” by complying with Article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a “security interest” but a consignment is in any event subject to the provisions on consignment sales (section 554.2326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

38. “*Send*” in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

39. “*Signed*” includes any symbol executed or adopted by a party with present intention to authenticate a writing.

40. “*Surety*” includes guarantor.

41. “*Telegram*” includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

42. “*Term*” means that portion of an agreement which relates to a particular matter.

43. “*Unauthorized*” signature or endorsement means one made without actual, implied or apparent authority and includes a forgery.

44. “*Value*”. Except as otherwise provided with respect to negotiable instruments and bank collections (sections 554.3303, 554.4208 and 554.4209) a person gives “value” for rights if the person acquires them

a. in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

b. as security for or in total or partial satisfaction of a pre-existing claim; or

c. by accepting delivery pursuant to a pre-existing contract for purchase; or

d. generally, in return for any consideration sufficient to support a simple contract.

45. “*Warehouse receipt*” means a receipt issued by a person engaged in the business of storing goods for hire.

46. “*Written*” or “*writing*” includes printing, typewriting or any other intentional reduction to tangible form.

89 Acts, ch 113, §54 SF 475  
Subsections 5, 14 and 20 amended

### 554.5114 Issuer's duty and privilege to honor—right to reimbursement.

1. An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be

satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

2. Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (section 554.7507) or of a certificated security (section 554.8306) or is forged or fraudulent or there is fraud in the transaction:

a. the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (section 554.3302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (section 554.7502) or a bona fide purchaser of a certificated security (section 554.8302); and

b. in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

3. Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

4. When a credit provides for payment by the issuer on receipt of notice that the required documents are in the possession of a correspondent or other agent of the issuer

a. any payment made on receipt of such notice is conditional; and

b. the issuer may reject documents which do not comply with the credit if it does so within three banking days following its receipt of the documents; and

c. in the event of such rejection, the issuer is entitled by charge-back or otherwise to return of the payment made.

5. In the case covered by subsection 4 failure to reject documents within the time specified in subparagraph "b" constitutes acceptance of the documents and makes the payment final in favor of the beneficiary.

89 Acts, ch 113, §55 SF 475  
Subsection 2 amended

### 554.8102 Definitions and index of definitions.

1. In this Article, unless the context otherwise requires

a. A "*certified security*" is a share, participation, or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is

i. represented by an instrument issued in bearer or registered form;

ii. of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

iii. either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

b. An "*uncertificated security*" is a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the issuer which is

i. not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;

ii. of a type commonly dealt in on securities exchanges or markets; and

iii. either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

c. A "*security*" is either a certificated or an uncertificated security. If a security is certificated, the terms "*security*" and "*certified security*" may mean either the intangible interest, the instrument representing that interest, or both, as the

context requires. A writing that is a certificated security is governed by this Article and not by Article 3 even though it also meets the requirements of that Article. This Article does not apply to money. If a certificated security has been retained by or surrendered to the issuer or its transfer agent for reasons other than registration of transfer, other temporary purpose, payment, exchange, or acquisition by the issuer, that security shall be treated as an uncertificated security for purposes of this Article.

d. A certificated security is in “*registered form*” if:

- i. it specifies a person entitled to the security or to the rights it represents, and
- ii. its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security so states.

e. A certificated security is in “*bearer form*” if it runs to bearer according to its terms and not by reason of any endorsement.

2. A “*subsequent purchaser*” is a person who takes other than by original issue.

3. A “*clearing corporation*” is a corporation registered as a “*clearing agency*” as under federal securities laws or a corporation:

a. At least ninety percent of whose capital stock is held by or for one or more organizations, none of which, other than a national securities exchange or association, holds in excess of twenty percent of the capital stock of the corporation, each of which is

- i. subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws,
- ii. a broker or dealer or investment company registered under the federal securities laws, or
- iii. a national securities exchange or association registered under the federal securities laws, and

b. Any remaining capital stock of which is held by individuals who have purchased it at or prior to the time of their taking office as directors of the corporation and who have purchased only so much of such capital stock as is necessary to permit them to qualify as directors.

4. A “*custodian bank*” is a bank or trust company that is supervised and examined by state or federal authority having supervision over banks and is acting as custodian for a clearing corporation.

5. Other definitions applying to this Article or to specified Parts thereof and the sections in which they appear are:

“Adverse claim”.	Section 554.8302.
“Bona fide purchaser”.	Section 554.8302.
“Broker”.	Section 554.8303.
“Debtor”.	Section 554.9105.
“Financial intermediary”.	Section 554.8313.
“Guarantee of the signature”.	Section 554.8402.
“Initial transaction statement”.	Section 554.8408.
“Instruction”.	Section 554.8308.
“Intermediary bank”.	Section 554.4105.
“Issuer”.	Section 554.8201.
“Overissue”.	Section 554.8104.
“Secured party”.	Section 554.9105.
“Security agreement”.	Section 554.9105.

6. In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

**554.8103 Issuer's lien.**

A lien upon a security in favor of an issuer thereof is valid against a purchaser only if:

- a. the security is certificated and the right of the issuer to the lien is noted conspicuously thereon; or
- b. the security is uncertificated and a notation of the right of the issuer to the lien is contained in the initial transaction statement sent to the purchaser or, if the purchaser's interest is transferred to the purchaser other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

89 Acts, ch 113, §2 SF 475  
Section amended

**554.8104 Effect of overissue—"overissue."**

1. The provisions of this Article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue; but if:

- a. an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase the security for that person and either to deliver a certificated security or to register the transfer of an uncertificated security to that person against surrender of any certificated security that person holds; or
- b. a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price that person or the last purchaser for value paid for it with interest from the date of that person's demand.

2. "*Overissue*" means the issue of securities in excess of the amount the issuer has corporate power to issue.

89 Acts, ch 113, §3 SF 475  
Section amended

**554.8105 Certificated securities negotiable—statements and instructions not negotiable—presumptions.**

1. Certificated securities governed by this Article are negotiable instruments.
2. Statements (section 554.8408), notices, or the like, sent by the issuer of uncertificated securities and instructions (section 554.8308) are neither negotiable instruments nor certificated securities.
3. In any action on a security:
  - a. unless specifically denied in the pleadings, each signature on a certificated security, in a necessary endorsement, on an initial transaction statement, or on an instruction, is admitted;
  - b. if the effectiveness of a signature is put in issue, the burden of establishing it is on the party claiming under the signature, but the signature is presumed to be genuine or authorized;
  - c. if signatures on a certificated security are admitted or established, production of the security entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security;
  - d. if signatures on an initial transaction statement are admitted or established, the facts stated in the statement are presumed to be true as of the time of its issuance; and
  - e. after it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect is ineffective (section 554.8202).

89 Acts, ch 113, §4 SF 475  
Section amended

**554.8106 Applicability.**

The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the validity of a security, the effectiveness of registration by the issuer, and the rights and duties of the issuer with respect to:

- a. registration of transfer of a certificated security;
- b. registration of transfer, pledge, or release of an uncertificated security; and
- c. sending of statements of uncertificated securities.

89 Acts, ch 113, §5 SF 475  
Section amended

**554.8107 Securities transferable—action for price.**

1. Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to transfer securities may transfer any certificated security of the specified issue in bearer form or registered in the name of the transferee, or endorsed to the transferee, or in blank, or the transferor may transfer an equivalent uncertificated security to the transferee or a person designated by the transferee.

2. If the buyer fails to pay the price as it comes due under a contract of sale, the seller may recover the price of:

- a. certificated securities accepted by the buyer;
- b. uncertificated securities that have been transferred to the buyer or a person designated by the buyer; and
- c. other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

89 Acts, ch 113, §6 SF 475  
Section amended

**554.8108 Registration of pledge and release of uncertificated securities.**

A security interest in an uncertificated security may be evidenced by the registration of pledge to the secured party or a person designated by the secured party. There can be no more than one registered pledge of an uncertificated security at any time. The registered owner of an uncertificated security is the person in whose name the security is registered, even if the security is subject to a registered pledge. The rights of a registered pledgee of an uncertificated security under this Article are terminated by the registration of release.

89 Acts, ch 113, §7 SF 475  
NEW section

**554.8201 “Issuer.”**

1. With respect to obligations on or defenses to a security “*issuer*” includes a person who:

- a. places or authorizes the placing of that person’s name on a certificated security (otherwise than as authenticating trustee, registrar, transfer agent, or the like) to evidence that it represents a share, participation, or other interest in that person’s property or in an enterprise or to evidence that person’s duty to perform an obligation represented by the certificated security;
- b. creates shares, participations or other interests in the person’s property or in an enterprise or undertakes obligations, which shares, participations, interests, or obligations are uncertificated securities;
- c. directly or indirectly creates fractional interests in that person’s rights or property, which fractional interests are represented by certificated securities; or
- d. becomes responsible for or in place of any other person described as an issuer in this section.

2. With respect to obligations on or defenses to a security, a guarantor is an issuer to the extent of the guarantor’s guaranty, whether or not the guarantor’s obligation is noted on a certificated security or on statements of uncertificated securities sent pursuant to section 554.8408.

3. With respect to registration of transfer, pledge, or release (Part 4 of this Article), “*issuer*” means a person on whose behalf transfer books are maintained.

89 Acts, ch 113, §8 SF 475  
Section amended

**554.8202 Issuer’s responsibility and defenses—notice of defect or defense.**

1. Even against a purchaser for value and without notice, the terms of a security include:

- a. if the security is certificated, those stated on the security;
- b. if the security is uncertificated, those contained in the initial transaction statement sent to such purchaser, or if the purchaser’s interest is transferred to the purchaser other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or registered pledgee; and
- c. those made part of the security by reference, on the certificated security or in the initial transaction statement, to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order or the like, to the extent that the terms referred to do not conflict with the terms stated on the certificated security or contained in the initial statement. A reference under this paragraph does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even though the certificated security or statement expressly states that a person accepting it admits notice.

2. A certificated security in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has been sent to a purchaser for value, other than a security issued by a government or governmental agency or unit, even though issued with a defect going to its validity, is valid with respect to the purchaser if the purchaser is without notice of the particular defect unless the defect involves a violation of constitutional provisions, in which case the security is valid with respect to a subsequent purchaser for value and without notice of the defect.

This subsection applies to an issuer that is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

3. Except as provided in the case of certain unauthorized signatures (section 554.8205), lack of genuineness of a certificated security or an initial transaction statement is a complete defense, even against a purchaser for value and without notice.

4. All other defenses of the issuer of a certificated or uncertificated security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken without notice of the particular defense.

5. Nothing in this section shall be construed to affect the right of a party to a “when, as and if issued” or a “when distributed” contract to cancel the contract in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

89 Acts, ch 113, §9 SF 475  
Section amended

**554.8203 Staleness as notice of defects or defenses.**

1. After an act or event creating a right to immediate performance of the principal obligation represented by a certificated security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer if:

a. the act or event is one requiring the payment of money, the delivery of certificated securities, the registration of transfer of uncertificated securities, or any of these on presentation or surrender of the certificated security, the funds or securities are available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; and

b. the act or event is not covered by paragraph "a" and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due.

2. A call that has been revoked is not within subsection 1.

89 Acts, ch 113, §10 SF 475  
Section amended

#### **554.8204 Effect of issuer's restrictions on transfer.**

A restriction on transfer of a security imposed by the issuer, even though otherwise lawful, is ineffective against any person without actual knowledge of it unless:

a. the security is certificated and the restriction is noted conspicuously thereon; or

b. the security is uncertificated and a notation of the restriction is contained in the initial transaction statement sent to the person or, if the person's interest is transferred to the person other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

89 Acts, ch 113, §11 SF 475  
Section amended

#### **554.8205 Effect of unauthorized signature on certificated security or initial transaction statement.**

An unauthorized signature placed on a certificated security prior to or in the course of issue or placed on an initial transaction statement is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security or a purchaser for value of an uncertificated security to whom such initial transaction statement has been sent, if the purchaser is without notice of the lack of authority and if the signing has been done by:

a. an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security, of similar securities, or of initial transaction statements or the immediate preparation for signing of any of them; or

b. an employee of the issuer, or of any of the foregoing, entrusted with responsible handling of the security or initial transaction statement.

89 Acts, ch 113, §12 SF 475  
Section amended

#### **554.8206 Completion or alteration of certificated security or initial transaction statement.**

1. If a certificated security contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

a. any person may complete it by filling in the blanks as authorized; and

b. even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

2. A complete certificated security that has been improperly altered, even though fraudulently, remains enforceable, but only according to its original terms.

3. If an initial transaction statement contains the signatures necessary to its validity, but is incomplete in any other respect:

a. any person may complete it by filling in the blanks as authorized; and

b. even though the blanks are incorrectly filled in, the statement as completed is effective in favor of the person to whom it is sent if the person purchased the security referred to therein for value and without notice of the incorrectness.

4. A complete initial transaction statement that has been improperly altered, even though fraudulently, is effective in favor of a purchaser to whom it has been sent, but only according to its original terms.

89 Acts, ch 113, §13 SF 475  
Section amended

#### **554.8207 Rights of issuer with respect to registered owners.**

1. Prior to due presentment for registration of transfer of a certificated security in registered form, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.

2. Subject to the provisions of subsections 3, 4, and 6, the issuer or indenture trustee may treat the registered owner of an uncertificated security as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.

3. The registered owner of an uncertificated security that is subject to a registered pledge is not entitled to registration of transfer prior to the due presentment to the issuer of a release instruction. The exercise of conversion rights with respect to a convertible uncertificated security is a transfer within the meaning of this section.

4. Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:

a. register the transfer of the security to the new owner free of pledge, if the instruction specifies a new owner (who may be the registered pledgee) and does not specify a pledgee;

b. register the transfer of the security to the new owner subject to the interest of the existing pledgee, if the instruction specifies a new owner and the existing pledgee; or

c. register the release of the security from the existing pledge and register the pledge of the security to the other pledgee, if the instruction specifies the existing owner and another pledgee.

5. Continuity of perfection of a security interest is not broken by registration of transfer under subsection (4)(b) or by registration of release and pledge under subsection (4)(c), if the security interest is assigned.

6. If an uncertificated security is subject to a registered pledge:

a. any uncertificated securities issued in exchange for or distributed with respect to the pledged security shall be registered subject to the pledge;

b. any certificated securities issued in exchange for or distributed with respect to the pledged security shall be delivered to the registered pledgee; and

c. any money paid in exchange for or in redemption of part or all of the security shall be paid to the registered pledgee.

7. Nothing in this Article shall be construed to affect the liability of the registered owner of a security for calls, assessments, or the like.

89 Acts, ch 113, §14 SF 475  
Section amended

#### **554.8208 Effect of signature of authenticating trustee, registrar or transfer agent.**

1. A person placing that person's signature upon a certificated security or an initial transaction statement as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if the purchaser is without notice of the particular defect, that:

- a. the certificated security or initial transaction statement is genuine;
- b. that person's own participation in the issue or registration of transfer, pledge, or release of the security is within that person's capacity and within the scope of the authority received by that person from the issuer; and
- c. that person has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

2. Unless otherwise agreed, a person by so placing that person's signature does not assume responsibility for the validity of the security in other respects.

89 Acts, ch 113, §15 SF 475  
Section amended

#### **554.8301 Rights acquired by purchaser.**

1. Upon transfer of a security to a purchaser (section 554.8313), the purchaser acquires the rights in the security which the purchaser's transferor had or had actual authority to convey unless the purchaser's rights are limited by section 554.8302, subsection 4.

2. A transferee of a limited interest acquires rights only to the extent of the interest transferred. The creation or release of a security interest in a security is the transfer of a limited interest in that security.

89 Acts, ch 113, §16 SF 475  
Section amended

#### **554.8302 "Bona fide purchaser"—"adverse claim"—title acquired by bona fide purchaser.**

1. A "*bona fide purchaser*" is a purchaser for value in good faith and without notice of any adverse claim:

- a. who takes delivery of a certificated security in bearer form or in registered form, issued or endorsed to that purchaser or in blank;
- b. to whom the transfer, pledge, or release of an uncertificated security is registered on the books of the issuer; or
- c. to whom a security is transferred under the provisions of paragraph "c", "d"(i), or "g" of section 554.8313, subsection 1.

2. "*Adverse claim*" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

3. A bona fide purchaser in addition to acquiring the rights of a purchaser (section 554.8301) also acquires interest in the security free of any adverse claim.

4. Notwithstanding section 554.8301, subsection 1, the transferee of a particular certificated security who has been a party to any fraud or illegality affecting the security, or who as a prior holder of that certificated security had notice of an adverse claim, cannot improve the transferee's position by taking from a bona fide purchaser.

89 Acts, ch 113, §17 SF 475  
Section amended

#### **554.8303 "Broker."**

"*Broker*" means a person engaged for all or part of the person's time in the business of buying and selling securities, who in the transaction concerned acts for, buys a security from, or sells a security to, a customer. Nothing in this Article determines the capacity in which a person acts for purposes of any other statute or rule to which the person is subject.

89 Acts, ch 113, §18 SF 475  
Section amended

#### **554.8304 Notice to purchaser of adverse claims.**

1. A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) of a certificated security is charged with notice of adverse claims if:

- a. the security, whether in bearer or registered form, has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or
- b. the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

2. A purchaser (including a broker for the seller or buyer, but excluding an intermediary bank) to whom the transfer, pledge, or release of an uncertificated security is registered is charged with notice of adverse claims as to which the issuer has a duty under section 554.8403, subsection 4 at the time of registration and which are noted in the initial transaction statement sent to the purchaser or, if the purchaser's interest is transferred to the purchaser other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

3. The fact that the purchaser (including a broker for the seller or buyer) of a certificated or uncertificated security has notice that the security is held for a third person or is registered in the name of or endorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute constructive notice of adverse claims. However, if the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

89 Acts, ch 113, §19 SF 475  
Section amended

#### **554.8305 Staleness as notice of adverse claims.**

An act or event that creates a right to immediate performance of the principal obligation represented by a certificated security or sets a date on or after which a certificated security is to be presented or surrendered for redemption or exchange does not itself constitute any notice of adverse claims except in the case of a transfer:

- a. after one year from any date set for presentment or surrender for redemption or exchange; or
- b. after six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

89 Acts, ch 113, §20 SF 475  
Section amended

#### **554.8306 Warranties on presentment and transfer of certificated securities—warranties of originators of instructions.**

1. A person who presents a certificated security for registration or for payment or exchange, warrants to the issuer that the person is entitled to the registration, payment or exchange. But, a purchaser for value and without notice of adverse claims who receives a new, reissued, or reregistered certificated security on registration or transfer or receives an initial transaction statement confirming the registration of transfer of an equivalent uncertificated security to that purchaser warrants only that that purchaser has no knowledge of any unauthorized signature (section 554.8311) in a necessary endorsement.

2. A person by transferring a certificated security to a purchaser for value warrants only that:

- a. the person's transfer is effective and rightful;
  - b. the security is genuine and has not been materially altered; and
  - c. the person knows of no fact which might impair the validity of the security.
3. If a certificated security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against delivery, the intermediary by delivery warrants only the intermediary's own good faith and authority, even though the intermediary

has purchased or made advances against the claim to be collected against the delivery.

4. A pledgee or other holder for security who redelivers a certificated security received, or after payment and on order of the debtor delivers that security to a third person, makes only the warranties of an intermediary under subsection 3.

5. A person who originates an instruction warrants to the issuer that:

a. the originator is an appropriate person to originate the instruction; and  
b. at the time the instruction is presented to the issuer the originator will be entitled to the registration of transfer, pledge, or release.

6. A person who originates an instruction warrants to any person specially guaranteeing the originator's signature (section 554.8312, subsection 3) that:

a. the originator is an appropriate person to originate the instruction; and  
b. at the time the instruction is presented to the issuer  
i. the originator will be entitled to the registration of transfer, pledge, or release; and  
ii. the transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

7. A person who originates an instruction warrants to a purchaser for value and to any person guaranteeing the instruction (section 554.8312, subsection 6) that:

a. the originator is an appropriate person to originate the instruction;  
b. the uncertificated security referred to therein is valid; and  
c. at the time the instruction is presented to the issuer  
i. the transferor will be entitled to the registration of transfer, pledge, or release;  
ii. the transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction; and  
iii. the requested transfer, pledge, or release will be rightful.

8. If a secured party is the registered pledgee or the registered owner of an uncertificated security, a person who originates an instruction of release or transfer to the debtor or, after payment and on order of the debtor, a transfer instruction to a third person, warrants to the debtor or the third person only that the secured party is an appropriate person to originate the instruction and at the time the instruction is presented to the issuer, the transferor will be entitled to the registration of release or transfer. If a transfer instruction to a third person who is a purchaser for value is originated on order of the debtor, the debtor makes to the purchaser the warranties of paragraphs "b", "c", ii, and "c" iii of subsection 7.

9. A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants only that:

a. The person's transfer is effective and rightful; and  
b. The uncertificated security is valid.

10. A broker gives to the broker's customer and to the issuer and a purchaser the applicable warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the broker's customer.

89 Acts, ch 113, §21 SF 475  
Section amended

#### **554.8307 Effect of delivery without endorsement—right to compel endorsement.**

If a certificated security in registered form has been delivered to a purchaser without a necessary endorsement the purchaser may become a bona fide pur-

chaser only as of the time the endorsement is supplied; but against the transferor, the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied.

89 Acts, ch 113, §22 SF 475  
Section amended

### 554.8308 Endorsements—instructions.

1. An endorsement of a certificated security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or the person's signature is written without more upon the back of the security.

2. An endorsement may be in blank or special. An endorsement in blank includes an endorsement to bearer. A special endorsement specifies to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank endorsement into a special endorsement.

3. An endorsement purporting to be only of part of a certificated security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.

4. An "instruction" is an order to the issuer of an uncertificated security requesting that the transfer, pledge, or release from pledge of the uncertificated security specified therein be registered.

5. An instruction originated by an appropriate person is:

- a. a writing signed by an appropriate person; or
- b. a communication to the issuer in any form agreed upon in a writing signed by the issuer and an appropriate person.

If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed even though it has been completed incorrectly.

6. "An appropriate person" in subsection 1 means the person specified by the certificated security or by special endorsement to be entitled to the security.

7. "An appropriate person" in subsection 5 means:

- a. for an instruction to transfer or pledge an uncertificated security which is then not subject to a registered pledge, the registered owner; or
- b. for an instruction to transfer or release an uncertificated security which is then subject to a registered pledge, the registered pledgee.

8. In addition to the persons designated in subsections 6 and 7, "an appropriate person" in subsections 1 and 5 includes:

- a. if the person designated is described as a fiduciary but is no longer serving in the described capacity,—either that person or that person's successor;
- b. if the persons designated are described as more than one person as fiduciaries and one or more are no longer serving in the described capacity,—the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified;
- c. if the person designated is an individual and is without capacity to act by virtue of death, incompetence, infancy, or otherwise,—that person's executor, administrator, guardian, or like fiduciary;
- d. if the persons designated are described as more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign,—the survivor or survivors;
- e. a person having power to sign under applicable law or controlling instrument; and
- f. to the extent that the person designated or any of the foregoing persons may act through an agent,—that person's authorized agent.

9. Unless otherwise agreed, the endorser of a certificated security by the endorser's endorsement or the originator of an instruction by the originator's

origination assumes no obligation that the security will be honored by the issuer but only the obligations provided in section 554.8306.

10. Whether the person signing is appropriate is determined as of the date of signing and an endorsement made by or an instruction originated by the person does not become unauthorized for the purposes of this Article by virtue of any subsequent change of circumstances.

11. Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, pledge, or release, does not render the fiduciary's endorsement or an instruction originated by the fiduciary unauthorized for the purposes of this Article.

89 Acts, ch 113, §23 SF 475  
Section amended

#### **554.8309 Effect of endorsement without delivery.**

An endorsement of a certificated security, whether special or in blank, does not constitute a transfer until delivery of the certificated security on which it appears or, if the endorsement is on a separate document, until delivery of both the document and the certificated security.

89 Acts, ch 113, §24 SF 475  
Section amended

#### **554.8310 Endorsement of certificated security in bearer form.**

An endorsement of a certificated security in bearer form may give notice of adverse claims (section 554.8304) but does not otherwise affect any right to registration the holder possesses.

89 Acts, ch 113, §25 SF 475  
Section amended

#### **554.8311 Effect of unauthorized endorsement or instruction.**

Unless the owner or pledgee has ratified an unauthorized endorsement or instruction or is otherwise precluded from asserting its ineffectiveness:

a. the owner may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims, who has in good faith received a new, reissued, or reregistered certificated security on registration of transfer or received an initial transaction statement confirming the registration of transfer, pledge, or release of an equivalent uncertificated security to the purchaser; and

b. an issuer who registers the transfer of a certificated security upon the unauthorized endorsement or who registers the transfer, pledge, or release of an uncertificated security upon the unauthorized instruction is subject to liability for improper registration (section 554.8404).

89 Acts, ch 113, §26 SF 475  
Section amended

#### **554.8312 Effect of guaranteeing signature or endorsement or instruction.**

1. Any person guaranteeing a signature of an endorser of a certificated security warrants that at the time of signing

- a. the signature was genuine;
- b. the signer was an appropriate person to endorse (section 554.8308); and
- c. the signer had legal capacity to sign.

2. Any person guaranteeing a signature of the originator of an instruction warrants that at the time of signing:

- a. the signature was genuine;
- b. the signer was an appropriate person to originate the instruction (section 554.8308) if the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security was, in fact, the registered owner

or registered pledgee of such security, as to which fact the signature guarantor makes no warranty;

c. the signer had legal capacity to sign; and

d. the taxpayer identification number, if any, appearing on the instruction as that of the registered owner or registered pledgee was the taxpayer identification number of the signer or of the owner or pledgee for whom the signer was acting.

3. Any person specially guaranteeing the signature of the originator of an instruction makes not only the warranties of a signature guarantor (subsection 2) but also warrants that at the time the instruction is presented to the issuer:

a. the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security will be the registered owner or registered pledgee; and

b. the transfer, pledge, or release of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

4. The guarantor under subsections 1 and 2 or the special guarantor under subsection 3 does not otherwise warrant the rightfulness of the particular transfer, pledge, or release.

5. Any person guaranteeing an endorsement of a certificated security makes not only the warranties of a signature guarantor under subsection 1 but also warrants the rightfulness of the particular transfer in all respects.

6. Any person guaranteeing an instruction requesting the transfer, pledge, or release of an uncertificated security makes not only the warranties of a special signature guarantor under subsection 3, but also warrants the rightfulness of the particular transfer, pledge, or release in all respects.

7. No issuer may require a special guarantee of signature (subsection 3), a guarantee of endorsement (subsection 5), or a guarantee of instruction (subsection 6) as a condition to registration of transfer, pledge, or release.

8. The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to the person for any loss resulting from breach of the warranties.

89 Acts, ch 113, §27 SF 475  
Section amended

**554.8313 When transfer to purchaser occurs: financial intermediary as bona fide purchaser—"financial intermediary".**

1. Transfer of a security or a limited interest (including a security interest) therein to a purchaser occurs only:

a. at the time the purchaser or a person designated by the purchaser acquires possession of a certificated security;

b. at the time the transfer, pledge, or release of an uncertificated security is registered to the purchaser or a person designated by the purchaser;

c. at the time the purchaser's financial intermediary acquires possession of a certificated security specially endorsed to or issued in the name of the purchaser;

d. at the time a financial intermediary, not a clearinghouse, sends the purchaser confirmation of the purchase and also by book entry or otherwise identifies as belonging to the purchaser

- i. a specific certificated security in the financial intermediary's possession;
- ii. a quantity of securities that constitute or are part of a fungible bulk of certificated securities in the financial intermediary's possession or of uncertificated securities registered in the name of the financial intermediary; or
- iii. a quantity of securities that constitute or are part of a fungible bulk of securities shown on the account of the financial intermediary on the books of another financial intermediary;

e. with respect to an identified certificated security to be delivered while still in the possession of a third person, not a financial intermediary, at the time that person acknowledges that that person holds for the purchaser;

f. with respect to a specific uncertificated security the pledge or transfer of which has been registered to a third person, not a financial intermediary, at the time that person acknowledges that that person holds for the purchaser;

g. at the time appropriate entries to the account of the purchaser or a person designated by the purchaser on the books of a clearing corporation are made under section 554.8320;

h. with respect to the transfer of a security interest where the debtor has signed a security agreement containing a description of the security, at the time a written notification, which, in the case of the creation of the security interest, is signed by the debtor (which may be a copy of the security agreement) or which, in the case of the release or assignment of the security interest created pursuant to this paragraph, is signed by the secured party, is received by

i. a financial intermediary on whose books the interest of the transferor in the security appears;

ii. a third person, not a financial intermediary, in possession of the security, if it is certificated;

iii. a third person, not a financial intermediary, who is the registered owner of the security, if it is uncertificated and not subject to a registered pledge; or

iv. a third person, not a financial intermediary, who is the registered pledgee of the security, if it is uncertificated and subject to a registered pledge;

i. with respect to the transfer of a security interest where the transferor has signed a security agreement containing a description of the security, at the time new value is given by the secured party; or

j. with respect to the transfer of a security interest where the secured party is a financial intermediary and the security has already been transferred to the financial intermediary under paragraph "a", "b", "c", "d", or "g", at the time the transferor has signed a security agreement containing a description of the security and value is given by the secured party.

2. The purchaser is the owner of a security held for the purchaser by a financial intermediary, but cannot be a bona fide purchaser of a security so held except in circumstances specified in paragraphs "c", "d"(i), and "g" of subsection 1. If a security so held is part of a fungible bulk, as in the circumstances specified in paragraphs "d"(ii) and "d"(iii) of subsection 1, the purchaser is the owner of a proportionate property interest in the fungible bulk.

3. Notice of an adverse claim received by the financial intermediary or by the purchaser after the financial intermediary takes delivery of a certificated security as a holder for value or after the transfer, pledge, or release of an uncertificated security has been registered free of the claim to a financial intermediary who has given value is not effective either as to the financial intermediary or as to the purchaser. However, as between the financial intermediary and the purchaser the purchaser may demand transfer of an equivalent security as to which no notice of adverse claim has been received.

4. A "financial intermediary" is a bank, broker, clearing corporation or other person (or the nominee of any of them) which in the ordinary course of its business maintains security accounts for its customers and is acting in that capacity. A financial intermediary may have a security interest in securities held in account for its customer.

89 Acts, ch 113, §28 SF 475  
Section amended

#### **554.8314 Duty to transfer, when completed.**

1. Unless otherwise agreed if a sale of a security is made on an exchange or otherwise through brokers:

a. the selling customer fulfills that customer's duty to transfer at the time that customer:

i. places a certificated security in the possession of the selling broker or of a person designated by the broker;

ii. causes an uncertificated security to be registered in the name of the selling broker or a person designated by the broker;

iii. if requested, causes an acknowledgment to be made to the selling broker that a certificated or uncertificated security is held for that broker; or

iv. places in the possession of the selling broker or of a person designated by the broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within thirty days thereafter; and

b. the selling broker, including a correspondent broker acting for a selling customer, fulfills that broker's duty to transfer at the time that broker

i. places a certificated security in the possession of the buying broker or a person designated by the buying broker;

ii. causes an uncertificated security to be registered in the name of the buying broker or a person designated by the buying broker;

iii. places in the possession of the buying broker or of a person designated by the buying broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within thirty days thereafter; or

iv. effects clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

2. Except as provided in this section and unless otherwise agreed, a transferor's duty to transfer a security under a contract of purchase is not fulfilled until the transferor:

a. places certificated security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by the purchaser;

b. causes an uncertificated security to be registered in the name of the purchaser or a person designated by the purchaser; or

c. if the purchaser requests, causes an acknowledgment to be made to the purchaser that a certificated or uncertificated security is held for the purchaser.

3. Unless made on an exchange, a sale to a broker purchasing for the broker's own account is within subsection 2 and not within subsection 1.

89 Acts, ch 113, §29 SF 475  
Section amended

### **554.8315 Action against transferee based upon wrongful transfer.**

1. Any person against whom the transfer of a security is wrongful for any reason, including the person's incapacity, as against anyone except a bona fide purchaser, may:

a. reclaim possession of the certificated security wrongfully transferred;

b. obtain possession of any new certificated security representing all or part of the same rights;

c. compel the origination of an instruction to transfer to the person or a person designated by that person an uncertificated security constituting all or part of the same rights; or

d. have damages.

2. If the transfer is wrongful because of an unauthorized endorsement of a certificated security, the owner may also reclaim or obtain possession of the security or a new certificated security, even from a bona fide purchaser, if the ineffectiveness of the purported endorsement can be asserted against the purchaser under the provisions of this Article on unauthorized endorsements (section 554.8311).

3. The right to obtain or reclaim possession of a certificated security or to compel the origination of a transfer instruction may be specifically enforced and the transfer of a certificated or uncertificated security enjoined and a certificated security impounded pending the litigation.

89 Acts, ch 113, §30 SF 475  
Section amended

**554.8316 Purchaser's right to requisites for registration of transfer, pledge, or release on books.**

Unless otherwise agreed, the transferor of a certificated security or the transferor, pledgor, or pledgee of an uncertificated security on due demand must supply the transferor's, pledgor's, or pledgee's purchaser with any proof of the transferor's authority to transfer, pledge, or release or with any other requisite necessary to obtain registration of the transfer, pledge, or release of the security; but if the transfer, pledge, or release is not for value, a transferor, pledgor, or pledgee need not do so unless the purchaser furnishes the necessary expenses. Failure within a reasonable time to comply with a demand gives the purchaser the right to reject or rescind the transfer, pledge, or release.

89 Acts, ch 113, §31 SF 475  
Section amended

**554.8317 Creditors' rights.**

1. Subject to the exceptions in subsections 3 and 4, no attachment or levy upon a certificated security or any share or other interest represented thereby which is outstanding is valid until the security is actually seized by the officer making the attachment or levy, but a certificated security which has been surrendered to the issuer may be reached by a creditor by legal process at the issuer's chief executive office in the United States.

2. An uncertificated security registered in the name of the debtor may not be reached by a creditor except by legal process at the issuer's chief executive office in the United States.

3. The interest of a debtor in a certificated security that is in the possession of a secured party not a financial intermediary or in an uncertificated security registered in the name of a secured party not a financial intermediary (or in the name of a nominee of the secured party) may be reached by a creditor by legal process upon the secured party.

4. The interest of a debtor in a certificated security that is in the possession of or registered in the name of a financial intermediary or in an uncertificated security registered in the name of a financial intermediary may be reached by a creditor by legal process upon the financial intermediary on whose books the interest of the debtor appears.

5. Unless otherwise provided by law, a creditor's lien upon the interest of a debtor in a security obtained pursuant to subsection 3 or 4 is not a restraint on the transfer of the security, free of the lien, to a third party for new value; but in the event of a transfer, the lien applies to the proceeds of the transfer in the hands of the secured party or financial intermediary, subject to any claims having priority.

6. A creditor whose debtor is the owner of a security is entitled to aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching the security or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by ordinary legal process.

89 Acts, ch 113, §32 SF 475  
Section amended

**554.8318 No conversion by good faith conduct.**

An agent or bailee who in good faith (including observance of reasonable commercial standards if the agent or bailee is in the business of buying, selling or otherwise dealing with securities) has received certificated securities and sold,

pledged, or delivered them or has sold or caused the transfer or pledge of uncertificated securities over which the agent or bailee had control according to the instructions of the agent's or bailee's principal, is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right so to deal with the securities.

89 Acts, ch 113, §33 SF 475  
Section amended

#### **554.8319 Statute of frauds.**

A contract for the sale of securities is not enforceable by way of action or defense unless:

- a. there is some writing signed by the party against whom enforcement is sought or by that party's authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price;
- b. delivery of a certificated security or transfer instruction has been accepted or transfer of an uncertificated security has been registered and the transferee has failed to send written objection to the issuer within ten days after receipt of the initial transaction statement confirming the registration, or payment has been made, but the contract is enforceable under this provision only to the extent of the delivery or payment;
- c. within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under paragraph "a" has been received by the party against whom enforcement is sought and that party has failed to send written objection to its contents within ten days after its receipt; or
- d. the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court that a contract was made for the sale of a stated quantity of described securities at a defined or stated price.

89 Acts, ch 113, §34 SF 475  
Section amended

#### **554.8320 Transfer or pledge within central depository system.**

1. In addition to other methods, a transfer, pledge, or release of a security or any interest therein may be effected by the making of appropriate entries on the books of a clearing corporation reducing the account of the transferor, pledgor, or pledgee and increasing the account of the transferee, pledgee, or pledgor by the amount of the obligation, or the number of shares or rights transferred, pledged, or released, if the security is shown on the account of a transferor, pledgor, or pledgee on the books of the clearing corporation; is subject to the control of the clearing corporation; and

- a. if certificated,
    - i. is in the custody of the clearing corporation, another clearing corporation, a custodian bank or a nominee of any of them; and
    - ii. is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing corporation, a custodian bank, or a nominee of any of them; or
  - b. if uncertificated, is registered in the name of the clearing corporation, another clearing corporation, a custodian bank, or a nominee of any of them.
2. Under this section entries may be made with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number, or the like, and, in appropriate cases, may be on a net basis taking into account other transfers, pledges, or releases of the same security.
3. A transfer under this section is effective (section 554.8313) and the purchaser acquires the rights of the transferor (section 554.8301). A pledge or release under this section is the transfer of a limited interest. If a pledge or the creation

of a security interest is intended, the security interest is perfected at the time when both value is given by the pledgee and the appropriate entries are made (section 554.8321). A transferee or pledgee under this section may be a bona fide purchaser (section 554.8302).

4. A transfer or pledge under this section is not a registration of transfer under Part 4.

5. That entries made on the books of the clearing corporation as provided in subsection 1 are not appropriate does not affect the validity or effect of the entries or the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

89 Acts, ch 113, §35 SF 475  
Section amended

### **554.8321 Enforceability, attachment, perfection, and termination of security interests.**

1. A security interest in a security is enforceable and can attach only if it is transferred to the secured party or a person designated by the secured party pursuant to a provision of section 554.8313, subsection 1.

2. A security interest so transferred pursuant to agreement by a transferor who has rights in the security to a transferee who has given value is a perfected security interest, but a security interest that has been transferred solely under paragraph "i" of section 554.8313, subsection 1 becomes unperfected after twenty-one days unless, within that time, the requirements for transfer under any other provision of section 554.8313, subsection 1 are satisfied.

3. A security interest in a security is subject to the provisions of Article 9, but:

a. no filing is required to perfect the security interest; and

b. no written security agreement signed by the debtor is necessary to make the security interest enforceable, except as otherwise provided in paragraph "h", "i", or "j" of section 554.8313, subsection 1. The secured party has the rights and duties provided under section 554.9207, to the extent they are applicable, whether or not the security is certificated, and, if certificated, whether or not it is in the secured party's possession.

4. Unless otherwise agreed, a security interest in a security is terminated by transfer to the debtor or a person designated by the debtor pursuant to a provision of section 554.8313, subsection 1. If a security is thus transferred, the security interest, if not terminated, becomes unperfected unless the security is certificated and is delivered to the debtor for the purpose of ultimate sale or exchange or presentation, collection, renewal, or registration of transfer. In that case, the security interest becomes unperfected after twenty-one days unless, within that time, the security (or securities for which it has been exchanged) is transferred to the secured party or a person designated by the secured party pursuant to a provision of section 554.8313, subsection 1.

89 Acts, ch 113, §36 SF 475  
NEW section

### **554.8401 Duty of issuer to register transfer, pledge, or release.**

1. If a certificated security in registered form is presented to the issuer with a request to register transfer or an instruction is presented to the issuer with a request to register transfer, pledge, or release the issuer shall register the transfer, pledge, or release as requested if:

a. the security is endorsed or the instruction was originated by the appropriate person or persons (section 554.8308);

b. reasonable assurance is given that those endorsements or instructions are genuine and effective (section 554.8402);

c. the issuer has no duty as to adverse claims or has discharged the duty (section 554.8403);

d. any applicable law relating to the collection of taxes has been complied with; and

e. the transfer, pledge, or release is in fact rightful or is to a bona fide purchaser.

2. If an issuer is under a duty to register a transfer, pledge, or release of a security, the issuer is also liable to the person presenting a certificated security or an instruction for registration or that person's principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, pledge, or release.

89 Acts, ch 113, §37 SF 475  
Section amended

#### 554.8402 Assurance that endorsements and instructions are effective.

1. The issuer may require the following assurance that each necessary endorsement of a certificated security or each instruction (section 554.8308) is genuine and effective:

a. in all cases, a guarantee of the signature (section 554.8312, subsection 1 or 2) of the person endorsing a certificated security or originating an instruction including, in the case of an instruction, a warranty of the taxpayer identification number or, in the absence thereof, other reasonable assurance of identity;

b. if the endorsement is made or the instruction is originated by an agent, appropriate assurance of authority to sign;

c. if the endorsement is made or the instruction is originated by a fiduciary, appropriate evidence of appointment or incumbency;

d. if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

e. if the endorsement is made or the instruction is originated by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

2. A "guarantee of the signature" in subsection 1 means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

3. "Appropriate evidence of appointment or incumbency" in subsection 1 means

a. in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer of that court and dated within one hundred eighty days before the date of presentation for transfer, pledge, or release; or

b. in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of that document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to the evidence if they are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph "b" except to the extent that the contents relate directly to the appointment or incumbency.

4. The issuer may elect to require reasonable assurance beyond that specified in this section, but if it does so and, for a purpose other than that specified in subsection 3 "b", both requires and obtains a copy of a will, trust, indenture, articles of copartnership, bylaws, or other controlling instrument, it is charged with notice of all matters contained therein affecting the transfer, pledge, or release.

89 Acts, ch 113, §38 SF 475  
Section amended

#### 554.8403 Issuer's duty as to adverse claims.

1. An issuer to whom a certificated security is presented for registration shall inquire into adverse claims if:

a. a written notification of an adverse claim is received at a time and in a manner affording the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued, or registered certificated security, and the notification identifies the claimant, the registered owner, and the issue of which the security is a part, and provides an address for communications directed to the claimant; or

b. the issuer is charged with notice of an adverse claim from a controlling instrument it has elected to require under section 554.8402, subsection 4.

2. The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by the adverse claimant or if there be no such address at the adverse claimant's residence or regular place of business that the certificated security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty days from the date of mailing the notification, either:

a. an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

b. there is filed with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by complying with the adverse claim.

3. Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under section 554.8402, subsection 4, or receives notification of an adverse claim under subsection 1, if a certificated security presented for registration is endorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular:

a. an issuer registering a certificated security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship; and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

b. an issuer registering transfer on an endorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

c. the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the endorsement of a fiduciary to the same fiduciary or to the fiduciary's nominee.

4. An issuer is under no duty as to adverse claims with respect to an uncertificated security except:

a. claims embodied in a restraining order, injunction, or other legal process served upon the issuer if the process was served at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection 5;

b. claims of which the user\* has received a written notification from the registered owner or the registered pledgee if the notification was received at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection 5;

c. claims (including restrictions on transfer not imposed by the issuer) to which the registration of transfer to the present registered owner was subject and were so noted in the initial transaction statement sent to the issuer; and

d. claims as to which an issuer is charged with notice from a controlling instrument it has elected to require under section 554.8402, subsection 4.

5. If the issuer of an uncertificated security is under a duty as to an adverse claim, the issuer discharges that duty by:

a. including a notation of the claim in any statements sent with respect to the security under section 554.8408, subsections 3, 6, and 7; and

b. refusing to register the transfer or pledge of the security unless the nature of the claim does not preclude transfer or pledge subject thereto.

6. If the transfer or pledge of the security is registered subject to an adverse claim, a notation of the claim must be included in the initial transaction statement and all subsequent statements sent to the transferee and pledgee under section 554.8408.

7. Notwithstanding subsections 4 and 5, if an uncertificated security was subject to a registered pledge at the time the issuer first came under a duty as to a particular adverse claim, the issuer has no duty as to that claim if transfer of the security is requested by the registered pledgee or an appropriate person acting for the registered pledgee unless:

a. the claim was embodied in legal process which expressly provides otherwise;

b. the claim was asserted in a written notification from the registered pledgee;

c. the claim was one as to which the issuer was charged with notice from a controlling instrument it required under section 554.8402, subsection 4 in connection with the pledgee's request for transfer; or

d. the transfer requested is to the registered owner.

89 Acts, ch 113, §39 SF 475

\*"Issuer" probably intended; corrective legislation pending

Section amended

#### **554.8404 Liability and nonliability for registration.**

1. Except as provided in any law relating to the collection of taxes, the issuer is not liable to the owner, pledgee, or any other person suffering loss as a result of the registration of a transfer, pledge, or release of a security if:

a. there were on or with a certificated security the necessary endorsements or the issuer had received an instruction originated by an appropriate person (section 554.8308); and

b. the issuer had no duty as to adverse claims or has discharged the duty (section 554.8403).

2. If an issuer has registered a transfer of a certificated security to a person not entitled to it, the issuer on demand shall deliver a like security to the true owner unless:

a. the registration was pursuant to subsection 1;

b. the owner is precluded from asserting any claim for registering the transfer under section 554.8405, subsection 1; or

c. the delivery would result in overissue, in which case the issuer's liability is governed by section 554.8104.

3. If an issuer has improperly registered a transfer, pledge, or release of an uncertificated security, the issuer on demand from the injured party shall restore the records as to the injured party to the condition that would have obtained if the improper registration had not been made unless:

a. the registration was pursuant to subsection 1; or

b. the registration would result in overissue, in which case the issuer's liability is governed by section 554.8104.

89 Acts, ch 113, §40 SF 475

Section amended

#### **554.8405 Lost, destroyed, and stolen certificated securities.**

1. If a certificated security has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time

after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under section 554.8404 or any claim to a new security under this section.

2. If the owner of a security claims that a certificated security has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificated security or, at the option of the issuer, an equivalent uncertificated security in place of the original security if the owner:

- a. so requests before the issuer has notice that the security has been acquired by a bona fide purchaser;
- b. files with the issuer a sufficient indemnity bond; and
- c. satisfies any other reasonable requirements imposed by the issuer.

3. If, after the issue of a new certificated or uncertificated security, a bona fide purchaser of the original certificated security presents it for registration of transfer, the issuer shall register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by section 554.8104. In addition to any rights on the indemnity bond, the issuer may recover the new certificated security from the person to whom it was issued or any person taking under the person to whom it was issued except a bona fide purchaser or may cancel the uncertificated security unless a bona fide purchaser or any person taking under a bona fide purchaser is then the registered owner or registered pledgee thereof.

89 Acts, ch 113, §41 SF 475  
Section amended

#### **554.8406 Duty of authenticating trustee, transfer agent or registrar.**

1. If a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its certificated securities or in the registration of transfers, pledges, and releases of its uncertificated securities, in the issue of new securities, or in the cancellation of surrendered securities:

- a. that person is under a duty to the issuer to exercise good faith and due diligence in performing that person's functions; and
- b. with regard to the particular functions that person performs, that person has the same obligation to the holder or owner of a certificated security or to the owner or pledgee of an uncertificated security and has the same rights and privileges as the issuer has in regard to those functions.

2. Notice to an authenticating trustee, transfer agent, registrar or other agent is notice to the issuer with respect to the functions performed by the agent.

89 Acts, ch 113, §42 SF 475  
Section amended

#### **554.8407 Exchangeability of securities.**

1. No issuer is subject to the requirements of this section unless it regularly maintains a system for issuing the class of securities involved under which both certificated and uncertificated securities are regularly issued to the category of owners, which includes the person in whose name the new security is to be registered.

2. Upon surrender of a certificated security with all necessary endorsements and presentation of a written request by the person surrendering the security, the issuer, if the issuer has no duty as to adverse claims or has discharged the duty (section 554.8403), shall issue to the person or a person designated by that person an equivalent uncertificated security subject to all liens, restrictions, and claims that were noted on the certificated security.

3. Upon receipt of a transfer instruction originated by an appropriate person who so requests, the issuer of an uncertificated security shall cancel the uncertificated security and issue an equivalent certificated security on which

must be noted conspicuously any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 554.8403, subsection 4) to which the uncertificated security was subject. The certificated security shall be registered in the name of and delivered to:

- a. the registered owner, if the uncertificated security was not subject to a registered pledge; or
- b. the registered pledgee, if the uncertificated security was subject to a registered pledge.

89 Acts, ch 113, §43 SF 475  
NEW section

### 554.8408 Statements of uncertificated securities.

1. Within two business days after the transfer of an uncertificated security has been registered, the issuer shall send to the new registered owner and, if the security has been transferred subject to a registered pledge, to the registered pledgee a written statement containing:

- a. a description of the issue of which the uncertificated security is a part;
- b. the number of shares or units transferred;
- c. the name and address and any taxpayer identification number of the new registered owner and, if the security has been transferred subject to a registered pledge, the name and address and any taxpayer identification number of the registered pledgee;
- d. a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 554.8403, subsection 4) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and
- e. the date the transfer was registered.

2. Within two business days after the pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the registered pledgee a written statement containing:

- a. a description of the issue of which the uncertificated security is a part;
- b. the number of shares or units pledged;
- c. the name and address and any taxpayer identification number of the registered owner and the registered pledgee;
- d. a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 554.8403, subsection 4) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and
- e. the date the pledge was registered.

3. Within two business days after the release from pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the pledgee whose interest was released a written statement containing:

- a. a description of the issue of which the uncertificated security is a part;
- b. the number of shares or units released from pledge;
- c. the name and address and any taxpayer identification number of the registered owner and the pledgee whose interest was released;
- d. a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 554.8403, subsection 4) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and
- e. the date the release was registered.

4. An "initial transaction statement" is the statement sent to:

- a. the new registered owner and, if applicable, to the registered pledgee pursuant to subsection 1;
- b. the registered pledgee pursuant to subsection 2; or
- c. the registered owner pursuant to subsection 3.

Each initial transaction statement shall be signed by or on behalf of the issuer and must be identified as “*initial transaction statement*”.

5. Within two business days after the transfer of an uncertificated security has been registered, the issuer shall send to the former registered owner and the former registered pledgee, if any, a written statement containing:

- a. a description of the issue of which the uncertificated security is a part;
- b. the number of shares or units transferred;
- c. the name and address and any taxpayer identification number of the former registered owner and of any former registered pledgee; and
- d. the date the transfer was registered.

6. At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered owner, the issuer shall send to the registered owner of each uncertificated security a dated written statement containing:

- a. a description of the issue of which the uncertificated security is a part;
- b. the name and address and any taxpayer identification number of the registered owner;
- c. the number of shares or units of the uncertificated security registered in the name of the registered owner on the date of the statement;
- d. the name and address and any taxpayer identification number of any registered pledgee and the number of shares or units subject to the pledge; and
- e. a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 554.8403, subsection 4) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

7. At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered pledgee, the issuer shall send to the registered pledgee of each uncertificated security a dated written statement containing:

- a. a description of the issue of which the uncertificated security is a part;
- b. the name and address and any taxpayer identification number of the registered owner;
- c. the name and address and any taxpayer identification number of the registered pledgee;
- d. the number of shares or units subject to the pledge; and
- e. a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 554.8403, subsection 4) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

8. If the issuer sends the statements described in subsections 6 and 7 at periodic intervals no less frequent than quarterly, the issuer is not obliged to send additional statements upon request unless the owner or pledgee requesting them pays to the issuer the reasonable cost of furnishing them.

9. Each statement sent pursuant to this section must bear a conspicuous legend reading substantially as follows: “This statement is merely a record of the rights of the addressee as of the time of its issuance. Delivery of this statement, of itself, confers no rights on the recipient. This statement is neither a negotiable instrument nor a security.”

89 Acts, ch 113, §44 SF 475  
NEW section

### **554.9103 Perfection of security interests in multiple state transactions.**

1. *Documents, instruments and ordinary goods.*

a. This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection 2, mobile goods described in subsection 3, and minerals described in subsection 5.

b. Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

c. If the parties to a transaction creating a security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

d. When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Part 3 of this Article to perfect the security interest,

i. if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

ii. if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

iii. for the purpose of priority over a buyer of consumer goods, section 554.9307, subsection 2, the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

## 2. *Certificate of title.*

a. This subsection applies to goods covered by one or more certificates of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

b. Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

c. Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in subsection 1, paragraph "d."

d. If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that that buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

## 3. *Accounts, general intangibles and mobile goods.*

a. This subsection applies to accounts (other than an account described in subsection 5 on minerals) and general intangibles (other than uncertificated

securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection 2.

b. The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

c. If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

d. A debtor shall be deemed located at the debtor's place of business if the debtor has one, at the debtor's chief executive office if the debtor has more than one place of business, otherwise at the debtor's residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

e. A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

4. *Chattel paper.* The rules stated for goods in subsection 1 apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection 3 apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

5. *Minerals.* Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

6. *Uncertificated securities.* The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities.

89 Acts, ch 113, §45, 46 SF 475  
 Subsection 3, paragraph a amended  
 NEW subsection 6

## 554.9105 Definitions and index of definitions.

1. In this Article unless the context otherwise requires:

a. "*Account debtor*" means the person who is obligated on an account, chattel paper or general intangible;

b. "*Chattel paper*" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter

or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

c. "*Collateral*" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

d. "*Debtor*" means the person who owes payment or other performance of the obligation secured, whether or not the person owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the Article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

e. "*Deposit account*" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

f. "*Document*" means document of title as defined in the general definitions of Article 1 (section 554.1201), and a receipt of the kind described in section 554.7201, subsection 2;

g. "*Encumbrance*" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

h. "*Goods*" include all things which are movable at the time the security interest attaches or which are fixtures (section 554.9313), but do not include money, documents, instruments, accounts, chattel paper, general intangibles or minerals or the like (including oil and gas) before extraction. "Goods" also include standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals and growing crops;

i. "*Instrument*" means a negotiable instrument (defined in section 554.3104), or a certificated security (defined in section 554.8102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment;

j. "*Mortgage*" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

k. An advance is made "*pursuant to commitment*" if the secured party has bound itself to make it, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from the secured party's obligation;

l. "*Security agreement*" means an agreement which creates or provides for a security interest;

m. "*Secured party*" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;

n. "*Transmitting utility*" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

2. Other definitions applying to this Article and the sections in which they appear are:

"Account".

Section 554.9106.

"Attach".

Section 554.9203.

"Construction mortgage".

Section 554.9313(1).

“Consumer goods”.	Section 554.9109(1).
“Equipment”.	Section 554.9109(2).
“Farm products”.	Section 554.9109(3).
“Fixture”.	Section 554.9313.
“Fixture filing”.	Section 554.9313.
“General intangibles”.	Section 554.9106.
“Inventory”.	Section 554.9109(4).
“Lien creditor”.	Section 554.9301(3).
“Proceeds”.	Section 554.9306(1).
“Purchase money security interest”.	Section 554.9107.
“United States”.	Section 554.9103.
3. The following definitions in other Articles apply to this Article:	
“Check”.	Section 554.3104.
“Contract for sale”.	Section 554.2106.
“Holder in due course”.	Section 554.3302.
“Note”.	Section 554.3104.
“Sale”.	Section 554.2106.

4. In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

89 Acts, ch 113, §47 SF 475  
Subsection 1, paragraph i amended

### **554.9203 Attachment and enforceability of security interest—proceeds, formal requisites.**

1. Subject to the provisions of section 554.4208 on the security interest of a collecting bank, section 554.8321 on security interests in securities and section 554.9113 on a security interest arising under the Article on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

- the collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;
- value has been given; and
- the debtor has rights in the collateral.

2. A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection 1 have taken place unless explicit agreement postpones the time of attaching.

3. Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by section 554.9306.

4. A transaction, although subject to this Article, is also subject to chapters 322, 534, 535, 536, 536A, and the Iowa consumer credit code, where applicable, and in the case of conflict between the provisions of this Article and those statutes, the provisions of those statutes control. Failure to comply with any applicable statute has only the effect which is specified therein.

89 Acts, ch 113, §48 SF 475; 89 Acts, ch 257, §31 HF 234  
Subsections 1 and 4 amended

### **554.9302 When filing is required to perfect security interest—security interests to which filing provisions of this Article do not apply.**

1. A financing statement must be filed to perfect all security interests except the following:

- a security interest in collateral in possession of the secured party under section 554.9305;

b. a security interest temporarily perfected in instruments or documents without delivery under section 554.9304 or in proceeds for a ten-day period under section 554.9306;

c. a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

d. a purchase money security interest in consumer goods; but filing is required for a vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in section 554.9313;

e. an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

f. a security interest of a collecting bank (section 554.4208) or in securities (section 554.8321) or arising under the Article on Sales (see section 554.9113) or covered in subsection 3 of this section;

g. an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

2. If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

3. The filing of a financing statement otherwise required by this Article is not necessary or effective to perfect a security interest in property subject to

a. a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this Article for filing of the security interest; or

b. the following statutes of this state; sections 321.18, 321.20 and 321.50; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Article (Part 4) apply to a security interest in that collateral created by that person as debtor; or

c. a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (section 554.9103, subsection 2).

4. Compliance with a statute or treaty described in subsection 3 is equivalent to the filing of a financing statement under this Article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in section 554.9103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this Article.

89 Acts, ch 113, §49 SF 475  
Subsection 1, paragraph f amended

**554.9304 Perfection of security interest in instruments, documents, and goods covered by documents—perfection by permissive filing—temporary perfection without filing or transfer of possession.**

1. A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than certificated securities or instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections 4 and 5 of this section and section 554.9306, subsections 2 and 3, on proceeds.

2. During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

3. A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

4. A security interest in instruments (other than certificated securities) or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one days from the time it attaches to the extent that it arises for new value given under a written security agreement.

5. A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument (other than certificated securities), a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

a. makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to section 554.9312, subsection 3; or

b. delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.

6. After the twenty-one day period in subsections 4 and 5 perfection depends upon compliance with applicable provisions of this Article.

89 Acts, ch 113, §50 SF 475  
Subsections 1, 4 and 5 amended

### **554.9305 When possession by secured party perfects security interest without filing.**

A security interest in letters of credit and advices of credit (subsection 2 "a" of section 554.5116), goods, instruments (other than certificated securities), money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this Article. The security interest may be otherwise perfected as provided in this Article before or after the period of possession by the secured party.

89 Acts, ch 113, §51 SF 475  
Section amended

### **554.9309 Protection of purchasers of instruments and documents and securities.**

Nothing in this Article limits the rights of a holder in due course of a negotiable instrument (section 554.3302) or a holder to whom a negotiable document of title has been duly negotiated (section 554.7501) or a bona fide purchaser of a security (section 554.8302) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Article does not constitute notice of the security interest to such holders or purchasers.

89 Acts, ch 113, §52 SF 475  
Section amended

### **554.9312 Priorities among conflicting security interests in the same collateral.**

1. The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: section 554.4208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; section 554.9103 on security interests related to other jurisdictions; section 554.9114 on consignments.

2. A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

3. A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

a. the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

b. the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (1) before the date of the filing made by the purchase money secured party, or (2) before the beginning of the twenty-one-day period where the purchase money security interest is temporarily perfected without filing or possession (section 554.9304, subsection 5); and

c. the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

d. the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

4. A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within twenty days thereafter.

5. In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections 3 and 4 of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

a. Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

b. So long as conflicting security interests are unperfected, the first to attach has priority.

6. For the purposes of subsection 5 a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

7. If future advances are made while a security interest is perfected by filing, the taking of possession, or under section 554.8321 on securities, the security interest has the same priority for the purposes of subsection 5 with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

89 Acts, ch 113, §53 SF 475

Subsection 7 amended

### **554.9501 Default—procedure when security agreement covers both real and personal property.**

Subsection 6 repealed July 1, 1990; 86 Acts, ch 1214, §29; 89 Acts, ch 108, §1 SF 389

## CHAPTER 556

## DISPOSITION OF UNCLAIMED PROPERTY

**556.8 Property held by state courts and public officers and agencies—abandonment.**

All intangible personal property held for the owner by any court, public corporation, public authority, agency, instrumentality, employee, or public officer of this state, or the United States, or a political subdivision of the state, another state, or the United States, that has remained unclaimed by the owner for more than two years after becoming payable or distributable is presumed abandoned.

89 Acts, ch 287, §4 SF 407  
Section amended

**556.11 Report of abandoned property.**

1. Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the state treasurer with respect to the property as hereinafter provided.

2. The report shall be verified and shall include:

a. Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of twenty-five dollars or more presumed abandoned under this chapter.

b. In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and the insured's or annuitant's last known address according to the life insurance corporation's records.

c. The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under twenty-five dollars each may be reported in aggregate.

d. The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property.

e. Other information which the state treasurer prescribes by rule as necessary for the administration of this chapter.

3. If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed names while holding the property, the holder shall file with the holder's report all prior known names and addresses of each holder of the property.

4. The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The state treasurer may postpone the reporting date upon written request by any person required to file a report.

5. If the holder of property presumed abandoned under this chapter knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

6. Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

7. The initial report filed under this chapter shall include all items of property that would have been presumed abandoned if this chapter had been in effect during the ten-year period preceding its effective date.

All agreements to pay compensation to recover or assist in the recovery of property reported under this section, made within twenty-four months after the date payment or delivery is made under section 556.13 are unenforceable.

However, such agreements made after twenty-four months from the date of payment or delivery are valid if the fee or compensation agreed upon is not more than fifteen percent of the recoverable property, the agreement is in writing and signed by the owner, and the writing discloses the nature and value of the property and the name and address of the person in possession. This section does not prevent an owner from asserting, at any time, that an agreement to locate property is based upon excessive or unjust consideration. This section does not apply to an owner who has a bona fide fee contract with a practicing attorney and counselor as described in chapter 602, article 10.

89 Acts, ch 287, §5 SF 407  
Unnumbered paragraph 1 (last paragraph) amended

### 556.18 Deposit of funds.

1. Except as provided in subsection 3, all funds received under this chapter, including the proceeds from the sale of abandoned property under section 556.17, shall be deposited monthly by the treasurer of state in the general fund of the state. However, the treasurer of state shall retain in a separate trust fund an amount not exceeding two hundred thousand dollars from which the treasurer of state shall make prompt payment of claims duly allowed under section 556.20. Before making the deposit, the treasurer of state shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

2. Before making any deposit to the credit of the general funds, the state treasurer may deduct:

- a. Any costs in connection with sale of abandoned property.
- b. Any costs of mailing and publication in connection with any abandoned property.
- c. Reasonable service charges.

3. After July 1, 1988, the treasurer of state shall annually credit the first one hundred fifty thousand dollars of all moneys received under section 556.4 to the energy research and development fund created under section 93.14, and shall credit all additional moneys received under section 556.4 to the energy crisis fund created under section 601K.102.

89 Acts, ch 287, §6 SF 407  
Subsection 1 amended

## CHAPTER 561

### HOMESTEAD

#### 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."** A principal or deputy state, county, or city officer shall not be required

to waive the officer's homestead exemption in order to be bonded as required pursuant to chapter 64.

89 Acts, ch 153, §3 HF 668  
Section amended

## CHAPTER 566

### CEMETERIES AND MANAGEMENT THEREOF

#### 566.19 Settlement of estates—maintenance fund.

The court in which the estate of a deceased person is administered, before final distribution, may allow and set apart from the estate, a sum sufficient to provide an income adequate to pay for the perpetual care and upkeep of the cemetery lot upon which the body of the deceased is buried, except where perpetual care has otherwise been provided for. The sum so allowed and set apart shall be paid to a trustee as provided by this chapter.

89 Acts, ch 83, §77 SF 112  
Section amended

## CHAPTER 567

### NONRESIDENT ALIENS—LAND OWNERSHIP

#### 567.3 Restriction on agricultural land holdings.

1. A nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, shall not purchase or otherwise acquire agricultural land in this state. A nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, which owns or holds agricultural land in this state on January 1, 1980, may continue to own or hold the land, but shall not purchase or otherwise acquire additional agricultural land in this state.

2. A person who acquires agricultural land in violation of this chapter or who fails to convert the land to the purpose other than farming within five years, as provided for in this chapter, remains in violation of this chapter for as long as the person holds an interest in the land.

3. The restriction set forth in subsection 1 of this section does not apply to the following:

- a. Agricultural land acquired by devise or descent.
- b. A bona fide encumbrance on agricultural land taken for purposes of security.
- c. Agricultural land acquired by a process of law in the collection of debts, by a deed in lieu of foreclosure, pursuant to a forfeiture of a contract for deed, or by any procedure for the enforcement of a lien or claim on the land, whether created by mortgage or otherwise. However, agricultural land so acquired shall be sold or otherwise disposed of within two years after title is transferred. Pending the sale or disposition, the land shall not be used for any purpose other than farming, and the land shall not be used for farming except under lease to an individual, trust, corporation, partnership or other business entity not subject to the restriction on the increase in agricultural land holdings imposed by section 172C.4. Agricultural land which has been acquired pursuant to this paragraph shall not be acquired or utilized by the nonresident alien, foreign business, or foreign government, or an agent, trustee, or fiduciary thereof, under either paragraph "d" or paragraph "e".

d. Agricultural land acquired for research or experimental purposes. Agricultural land is used for research or experimental purposes if any of the following apply:

(1) Research and experimental activities are undertaken on the agricultural land and commercial sales of products produced from farming the agricultural land do not occur or are incidental to the research or experimental purposes of the corporation. Commercial sales are incidental to the research or experimental purposes of the corporation when such sales are less than twenty-five percent of the gross sales of the primary product of the research.

(2) The agricultural land is used for the primary purpose of testing, developing, or producing seeds or plants for sale or resale to farmers as seed stock. Grain which is not sold as seed stock is an incidental sale and must be less than twenty-five percent of the gross sales of the primary product of the research and experimental activities.

(3) Until July 1, 2001, the agricultural land is used for the primary purpose of testing, developing, or producing animals for sale or resale to farmers as breeding stock. However, after July 1, 1989, to qualify under this paragraph, the following conditions must be satisfied:

(a) The nonresident alien, foreign business, or foreign government or an agent, trustee, or fiduciary of the alien, business, or government must not hold the agricultural land other than as a lessee. The term of the lease must be for not more than twelve years. A lessee shall not renew a lease entered into under this subparagraph (3). The lessee shall not enter into a lease under this paragraph, if another lease under this paragraph has been entered into by the lessee.

(b) A term or condition of sale, including resale, of seed stock or breeding stock must not relate to the direct or indirect control by the lessee of the breeding stock or breeding stock progeny subsequent to the sale.

(c) The number of acres of agricultural land held by the lessee must not exceed six hundred forty acres.

(d) The lessee must deliver a copy of the lease to the secretary of state. The secretary of state shall notify the lessee of receipt of the copy of the lease.

(4) Culls and test animals may be sold under subparagraph (3). For a three-year period beginning on the date that the lease takes effect, the gross sales for any year shall not be greater than five hundred thousand dollars. After the three-year period ends, the gross sales for any year shall not be greater than twenty-five percent of the gross sales for that year of the breeding stock, or five hundred thousand dollars, whichever is less. As used in subparagraph (3), "lessee" means a nonresident alien, foreign business, or foreign government, or an agent, trustee, or fiduciary acting on behalf of the nonresident alien, foreign business, or foreign government, or any other trade or business which is under the lessee's common control as provided in 26 U.S.C. §414.

(5) Effective July 1, 2001, subparagraph (3) shall not be effective. However, a lessee may continue for the duration of the period of the lease to lease the agricultural land under subparagraph (3) if the lease was entered into prior to July 1, 2001.

(6) Effective July 1, 2001, a nonresident alien, foreign business, or foreign government or an agent, trustee, or fiduciary of the alien, business, or government shall not, except as provided in subparagraph (5), acquire or hold agricultural land used for the primary purpose of testing, developing, or producing animals.

e. An interest in agricultural land, not to exceed three hundred twenty acres, acquired for an immediate or pending use other than farming. However, a nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, who lawfully owns over three hundred twenty acres on January 1, 1980, may continue to own or hold the land, but shall not purchase or otherwise acquire additional agricultural land in this state except by devise or descent from a nonresident alien. Pending the development of the agricultural land for purpose other than farming, the land shall not be used for farming except under lease to

an individual, trust, corporation, partnership or other business entity not subject to the restriction on the increase in agricultural land holdings imposed by section 172C.4.

4. A nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof shall not transfer title to or interest in agricultural land to a nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof except by devise or descent.

89 Acts, ch 311, §31 HF 778

Subsection 3, paragraph d, subparagraph (5), stricken effective July 1, 2013; 89 Acts, ch 311, §33 HF 778

Subsection 3, paragraph d stricken and rewritten

#### **567.8A Lessees conducting research or experiments.**

Lessees of agricultural land under section 567.3, subsection 3, paragraph "d", subparagraph (3), for research or experimental purposes, shall file a report with the secretary of state on or before March 31 of each year on forms adopted pursuant to chapter 17A and supplied by the secretary of state. The report shall contain the following information for the last year:

1. The name and principal place of business of the lessee.
2. The location of the agricultural land used for research or experimental purposes.
3. The date that the lease became effective.
4. The name and address of each person purchasing breeding stock produced on the agricultural land.
5. The number or volume of breeding stock purchased by each person purchasing breeding stock produced on the agricultural land.

89 Acts, ch 311, §32 HF 778

NEW section

## **CHAPTER 575**

### **NONSTATUTORY LIENS**

#### **575.1 Nonstatutory liens.**

A person claiming a common law lien, an equitable servitude lien, or a lien of similar nature which is other than a statutory lien, shall first give notice to any legal and equitable owners and persons in possession of the real or personal property against which the lien is sought. If the lien is filed by an owner of the real or personal property, notice shall first be given to any person with a lien or other interest in the property. The notice shall be given pursuant to the Iowa rules of civil procedure. Prior to the filing of the lien in any office of record in the county where the real or personal property is located, the district court in such county shall hold a hearing to determine the validity of the lien. Pendency of such a proceeding shall not be indexed under section 617.10 and shall not constitute lis pendens or constructive notice to third persons under sections 617.11 through 617.15. A bona fide purchaser takes title to the real or personal property free of any claims arising from such proceeding unless proper filing is made in the office of the county recorder as provided in this section. The person claiming the lien is required to prove the validity of the lien by a preponderance of the evidence. If the court determines the person claiming the lien has willfully and maliciously proceeded, a judgment may be entered against the person claiming the lien in favor of any resisting party for reasonable damages, including actual damages, costs, and reasonable attorneys' fees incurred by the resisting party. A lien, as described in this section, shall not be filed in any office of record other than as provided in this section and if such lien is filed other than as provided in this section, the lien shall be null and void and of no force or effect. If after hearing the district court enters an order determining the lien to be valid, the person claiming

the lien shall file a certified copy of the order in the office of the county recorder where the real or personal property is located. An appeal from the district court arising from such proceeding is by certiorari.

89 Acts, ch 163, §1 SF 508  
NEW section

## CHAPTER 598

### DISSOLUTION OF MARRIAGE

Child custody and visitation issues; mandatory mediation; pilot program in 1990 and 1991;  
89 Acts, ch 165 HF 20

#### 598.17 Dissolution of marriage—evidence.

A decree dissolving the marriage may be entered when the court is satisfied from the evidence presented that there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved. The decree shall state that the dissolution is granted to the parties, and shall not state that it is granted to only one party.

If at the time of trial petitioner fails to present satisfactory evidence that there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved, the respondent may then proceed to present such evidence as though the respondent had filed the original petition.

No marriage dissolution granted due to the mental illness of one of the spouses shall relieve the other spouse of any obligation imposed by law as a result of the marriage for the support of the mentally ill spouse. The court may make an order for such support or may waive the support obligation when satisfied from the evidence that it would create an undue hardship on the obliged spouse or that spouse's other dependents.

89 Acts, ch 296, §77 SF 141  
Unnumbered paragraph 2 amended

#### 598.21 Orders for disposition and support.

1. Upon every judgment of annulment, dissolution or separate maintenance the court shall divide the property of the parties and transfer the title of the property accordingly. The court may protect and promote the best interests of children of the parties by setting aside a portion of the property of the parties in a separate fund or conservatorship for the support, maintenance, education and general welfare of the minor children. The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties after considering all of the following:

- a. The length of the marriage.
- b. The property brought to the marriage by each party.
- c. The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.
- d. The age and physical and emotional health of the parties.
- e. The contribution by one party to the education, training or increased earning power of the other.
- f. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become

self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

*g.* The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of the children, or if the parties have joint legal custody, to the party having physical care of the children.

*h.* The amount and duration of an order granting support payments to either party pursuant to subsection 3 and whether the property division should be in lieu of such payments.

*i.* Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.

*j.* The tax consequences to each party.

*k.* Any written agreement made by the parties concerning property distribution.

*l.* The provisions of an antenuptial agreement.

*m.* Other factors the court may determine to be relevant in an individual case.

2. Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

3. Upon every judgment of annulment, dissolution or separate maintenance, the court may grant an order requiring support payments to either party for a limited or indefinite length of time after considering all of the following:

*a.* The length of the marriage.

*b.* The age and physical and emotional health of the parties.

*c.* The distribution of property made pursuant to subsection 1.

*d.* The educational level of each party at the time of marriage and at the time the action is commenced.

*e.* The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.

*f.* The feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.

*g.* The tax consequences to each party.

*h.* Any mutual agreement made by the parties concerning financial or service contributions by one party with the expectation of future reciprocation or compensation by the other party.

*i.* The provisions of an antenuptial agreement.

*j.* Other factors the court may determine to be relevant in an individual case.

4. The supreme court is authorized to prescribe uniform child support guidelines and criteria to be effective October 12, 1989, and to review the guidelines at least once every four years, pursuant to the federal Family Support Act of 1988, Pub. L. No. 100-485.

*a.* Upon every judgment of annulment, dissolution, or separate maintenance, the court may order either parent or both parents to pay an amount reasonable and necessary for supporting a child. In establishing the amount of support, consideration shall be given to the responsibility of both parents to support and provide for the welfare of the minor child and of a child's need, whenever practicable, for a close relationship with both parents. There shall be a rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. A variation from the guidelines shall not

be considered by a court without a record or written finding, based on stated reasons, that the guidelines would be unjust or inappropriate as determined under the criteria prescribed by the supreme court.

b. The guidelines prescribed by the supreme court shall be used by the department of human services in determining child support payments under sections 252C.2 and 252C.4. A variation from the guidelines shall not be considered by the department without a record or written finding, based on stated reasons, that the guidelines would be unjust or inappropriate as determined under criteria prescribed by the supreme court.

5. The court may protect and promote the best interests of a minor child by setting aside a portion of the child support which either party is ordered to pay in a separate fund or conservatorship for the support, education and welfare of the child.

6. The court may provide for joint custody of the children by the parties pursuant to section 598.41. All orders relating to custody of a child are subject to chapter 598A.

7. Orders made pursuant to this section need mention only those factors relevant to the particular case for which the orders are made but shall contain the names, birth dates, addresses, and counties of residence of the petitioner and respondent.

8. The court may subsequently modify orders made under this section when there is a substantial change in circumstances. In determining whether there is a substantial change in circumstances, the court shall consider the following:

- a. Changes in the employment, earning capacity, income or resources of a party.
- b. Receipt by a party of an inheritance, pension or other gift.
- c. Changes in the medical expenses of a party.
- d. Changes in the number or needs of dependents of a party.
- e. Changes in the physical or emotional health of a party.
- f. Changes in the residence of a party.
- g. Remarriage of a party.
- h. Possible support of a party by another person.
- i. Changes in the physical, emotional or educational needs of a child whose support is governed by the order.
- j. Contempt by a party of existing orders of court.
- k. Other factors the court determines to be relevant in an individual case.

A modification of a support order entered under chapter 252A, chapter 675, or this chapter between parties to the order is void unless the modification is approved by the court, after proper notice and opportunity to be heard is given to all parties to the order, and entered as an order of the court. If support payments have been assigned to the department of human services pursuant to section 239.3, the department shall be considered a party to the support order. Modifications of orders pertaining to child custody shall be made pursuant to chapter 598A. If the petition for a modification of an order pertaining to child custody asks either for joint custody or that joint custody be modified to an award of sole custody, the modification, if any, shall be made pursuant to section 598.41.

9. If the court orders a transfer of title to real property, the clerk of court shall issue a certificate under chapter 558 relative to each parcel of real estate affected by the order and immediately deliver the certificate for recording to the county recorder of the county in which the real estate is located. Any fees assessed shall be included as part of the court costs. The county recorder shall deliver the certificates to the county auditor as provided in section 558.58, subsection 1. Property divisions made under this chapter are not subject to modification.

## CHAPTER 598A

## UNIFORM CHILD-CUSTODY JURISDICTION

Child custody and visitation issues; mandatory mediation; pilot program in 1990 and 1991;  
89 Acts, ch 165 HF 20

## CHAPTER 600

## ADOPTION

**600.6 Attachments to an adoption petition.**

An adoption petition shall have attached to it the following:

1. A certified copy of the birth certificate showing parentage of the person to be adopted or, if such certificate is not available, a verified birth record.
2. A copy of any order terminating parental rights with respect to the person to be adopted.
3. Any written consent and verified statement required under section 600.7, except the consent required under subsection 1, paragraph "d", of that section.
4. Any preplacement investigation report that has been prepared at the time of filing pursuant to section 600.8.
5. An adoption information form completed by the petitioner containing the data specified under federal regulations adopted pursuant to Pub. L. No. 99-509, as codified in 42 U.S.C. §679 and 679A.

89 Acts, ch 140, §1 HF 196  
NEW subsection 5

**600.13 Adoption decrees.**

1. At the conclusion of the adoption hearing, the court shall:
  - a. Issue a final adoption decree;
  - b. Issue an interlocutory adoption decree; or,
  - c. Dismiss the adoption petition if the requirements of this Act have not been met or if dismissal of the adoption petition is in the best interest of the person whose adoption has been petitioned. Upon dismissal, the court shall determine who is to be guardian or custodian of a minor child, including the adoption petitioner if it is in the best interest of the minor person whose adoption has been petitioned.
2. An interlocutory adoption decree automatically becomes a final adoption decree at a date specified by the court in the interlocutory adoption decree, which date shall not be less than one hundred eighty days nor more than three hundred sixty days from the date the interlocutory decree is issued. However, an interlocutory adoption decree may be vacated prior to the date specified for it to become final. Also, the court may provide in the interlocutory adoption decree for further observation, investigation, and report of the conditions of and the relationships between the adoption petitioner and the person petitioned to be adopted.
3. If an interlocutory adoption decree is vacated under subsection 2, it shall be void from the date of issuance and the rights, duties, and liabilities of all persons affected by it shall, unless they have become vested, be governed accordingly. Upon vacation of an interlocutory adoption decree, the court shall proceed under the provisions of subsection 1, paragraph "c".
4. A final adoption decree terminates any parental rights, except those of a spouse of the adoption petitioner, existing at the time of its issuance and establishes the parent-child relationship between the adoption petitioner and the person petitioned to be adopted. Unless otherwise specified by law, such parent-child relationship shall be deemed to have been created at the birth of the child.

5. An interlocutory or a final adoption decree shall be entered with the clerk of the court. Such decree shall set forth any facts of the adoption petition which have been proven to the satisfaction of the court and any other facts considered to be relevant by the court and shall grant the adoption petition. If so designated in the adoption decree, the name of the adopted person shall be changed by issuance of that decree. The clerk of the court shall, within thirty days of issuance, deliver one certified copy of any adoption decree to the petitioner, one copy of any adoption decree to the department and any agency or person making an independent placement who placed a minor person for adoption, and one certification of adoption as prescribed in section 144.19 to the state registrar of vital statistics. Upon receipt of the certification, the state registrar shall prepare a new birth certificate pursuant to section 144.23 and deliver to the parents named in the decree and any adult person adopted by the decree a copy of the new birth certificate. The parents shall pay the fee prescribed in section 144.46. If the person adopted was born outside the state, the state registrar shall forward the certification of adoption to the appropriate agency in the state or foreign nation of birth. A copy of any interlocutory adoption decree vacation shall be delivered and another birth certificate shall be prepared in the same manner as a certification of adoption is delivered and the birth certificate was originally prepared.

6. The clerk of the district court shall attach to the certified copy of the decree delivered to the department, a copy of the adoption information form required to be attached to the adoption petition under section 600.6, subsection 5.

89 Acts, ch 140, §2 HF 196  
NEW subsection 6

#### **600.16 Termination and adoption record.**

1. Any information compiled under section 600.8, subsection 1, paragraph "c", subparagraphs (1) and (2) shall be made available at any time by the clerk of the court, the department, or any agency which made the placement to:

- a. The adopting parents.
- b. The adopted person, provided that person is an adult at the time the request for information is made.
- c. Any person approved by the department if the person uses this information solely for the purposes of conducting a legitimate research project or of treating a patient in a medical facility.

Information regarding an adopted person's existing medical and developmental history and family medical history, which meets the definition of background information in section 600.8, subsection 1, paragraph "c", but which was compiled prior to July 1, 1976, shall be made available as provided in this subsection. However, the identity of the adopted person's natural parents shall not be disclosed.

2. The permanent termination of parental rights record of the juvenile court under chapter 600A and the permanent adoption record of the court shall be sealed by the clerk of the juvenile court and the clerk of court, as appropriate, when they are complete and after the time for appeal has expired. All papers and records pertaining to a termination of parental rights under chapter 600A and to an adoption, whether a part of the permanent termination and adoption records of the juvenile court and of the court or on file with a guardian, guardian ad litem, custodian, person who placed a minor person, or the department shall not be open to inspection and the identity of the natural parents of an adopted person shall not be revealed. However, an agency involved in placement shall contact the adopting parents or the adult adopted child regarding eligibility of the adopted child for benefits based on entitlement of benefits or inheritance from the terminated natural parents. Also, the clerk of the court or county recorder shall, upon application to and order of the court for good cause shown, open the permanent

adoption record of the court for the adopted person who is an adult and reveal the names of either or both of the natural parents.

A natural parent may file an affidavit requesting that the court reveal or not reveal the parent's name. The court shall consider any such affidavit in determining whether there is good cause to order opening of the records. If the adopted person who applies for revelation of the natural parents' name has a sibling who is a minor and who has been adopted by the same parents, the court may deny the application on the grounds that revelation to the applicant may also indirectly and harmfully permit the same revelation to the applicant's minor sibling. To facilitate the natural parents in filing an affidavit, the department shall, upon request of a natural parent, file an affidavit in the court in which the adoption records have been sealed.

3. Notwithstanding any other provision in this section, the juvenile court or court may, upon competent medical evidence, open termination or adoption records if opening is shown to be necessary to save the life of or prevent irreparable physical harm to an adopted person or the person's offspring. The juvenile court or court shall make every reasonable effort to prevent the identity of the natural parents from becoming revealed under this subsection to the adopted person. The juvenile court or court may, however, permit revelation of the identity of the natural parents to medical personnel attending the adopted person or the person's offspring. These medical personnel shall make every reasonable effort to prevent the identity of the natural parents from becoming revealed to the adopted person.

4. Any person, other than the adopting parents or the adopted person, who discloses information in violation of the provisions of this section shall be, upon conviction, guilty of a simple misdemeanor.

89 Acts, ch 102, §7 SF 367  
Subsection 2 amended

## CHAPTER 601A

### CIVIL RIGHTS COMMISSION

#### 601A.2 Definitions.

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

1. "*Commission*" means the Iowa state civil rights commission created by this chapter.
2. "*Commissioner*" means a member of the commission.
3. "*Court*" means the district court in and for the judicial district of the state of Iowa in which the alleged unfair or discriminatory practice occurred or any judge of said court if the court is not in session at that time.
4. "*Disability*" means the physical or mental condition of a person which constitutes a substantial handicap, and the condition of a person with a positive human immunodeficiency virus test result, a diagnosis of acquired immune deficiency syndrome, a diagnosis of acquired immune deficiency syndrome-related complex, or any other condition related to acquired immune deficiency syndrome. The inclusion of a condition related to a positive human immunodeficiency virus test result in the meaning of "*disability*" under the provisions of this chapter does not preclude the application of the provisions of this chapter to conditions resulting from other contagious or infectious diseases.
5. "*Employee*" means any person employed by an employer.
6. "*Employer*" means the state of Iowa or any political subdivision, board, commission, department, institution, or school district thereof, and every other person employing employees within the state.

7. "*Employment agency*" means any person undertaking to procure employees or opportunities to work for any other person or any person holding itself to be equipped to do so.

8. "*Familial status*" means one or more individuals under the age of eighteen domiciled with either of the following:

a. A parent or another person having legal custody of the individual or individuals.

b. The designee of the parent or the other person having custody of the individual or individuals, with the written permission of the parent or other person.

9. "*Labor organization*" means any organization which exists for the purpose in whole or in part of collective bargaining, of dealing with employers concerning grievances, terms, or conditions of employment, or of other mutual aid or protection in connection with employment.

10. "*Person*" means one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state of Iowa and all political subdivisions and agencies thereof.

11. "*Public accommodation*" means each and every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods for a fee or charge to nonmembers of any organization or association utilizing the place, establishment, or facility, provided that any place, establishment, or facility that caters or offers services, facilities, or goods to the nonmembers gratuitously shall be deemed a public accommodation if the accommodation receives governmental support or subsidy. Public accommodation shall not mean any bona fide private club or other place, establishment, or facility which is by its nature distinctly private, except when such distinctly private place, establishment, or facility caters or offers services, facilities, or goods to the nonmembers for fee or charge or gratuitously, it shall be deemed a public accommodation during such period.

"*Public accommodation*" includes each state and local government unit or tax-supported district of whatever kind, nature, or class that offers services, facilities, benefits, grants or goods to the public, gratuitously or otherwise. This paragraph shall not be construed by negative implication or otherwise to restrict any part or portion of the pre-existing definition of the term "public accommodation".

12. "*Unfair practice*" or "*discriminatory practice*" means those practices specified as unfair or discriminatory in sections 601A.6, 601A.7, 601A.8, 601A.9, 601A.10 and 601A.11.

89 Acts, ch 205, §1 SF 56

NEW subsection 8 and subsections renumbered to alphabetize

### **601A.8 Unfair or discriminatory practices—housing.**

It shall be an unfair or discriminatory practice for any owner, or person acting for an owner, of rights to housing or real property, with or without compensation, including but not limited to persons licensed as real estate brokers or salespersons, attorneys, auctioneers, agents or representatives by power of attorney or appointment, or any person acting under court order, deed of trust, or will:

1. To refuse to sell, rent, lease, assign or sublease any real property or housing accommodation or part, portion or interest therein, to any person because of the race, color, creed, sex, religion, national origin, disability, or familial status of such person.

2. To discriminate against any person because of the person's race, color, creed, sex, religion, national origin, disability, or familial status, in the terms, conditions or privileges of the sale, rental, lease assignment or sublease of any real property or housing accommodation or any part, portion or interest therein.

3. To directly or indirectly advertise, or in any other manner indicate or publicize that the purchase, rental, lease, assignment, or sublease of any real

property or housing accommodation or any part, portion or interest therein, by persons of any particular race, color, creed, sex, religion, national origin, disability, or familial status is unwelcome, objectionable, not acceptable or not solicited.

4. To discriminate against the lessee or purchaser of any real property or housing accommodation or part, portion or interest of the real property or housing accommodation, or against any prospective lessee or purchaser of the property or accommodation, because of the race, color, creed, religion, sex, disability, age or national origin of persons who may from time to time be present in or on the lessee's or owner's premises for lawful purposes at the invitation of the lessee or owner as friends, guests, visitors, relatives or in any similar capacity.

89 Acts, ch 205, §2 SF 56  
Subsections 1, 2 and 3 amended

### 601A.12 Exceptions.

The provisions of section 601A.8 shall not apply to:

1. Any bona fide religious institution with respect to any qualifications it may impose based on religion, when such qualifications are related to a bona fide religious purpose.

2. The rental or leasing of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or members of the owner's family reside in one of such housing accommodations.

3. The rental or leasing of less than six rooms within a single housing accommodation by the occupant or owner of such housing accommodation, if the occupant or owner or members of that person's family reside therein.

4. Restrictions based on sex on the rental or leasing of housing accommodations by nonprofit corporations.

5. The rental or leasing of a housing accommodation within which residents of both sexes must share a common bathroom facility on the same floor of the building.

6. Housing accommodations provided under any state or federal program specifically designed and operated to assist elderly persons, as defined in the state or federal program, and housing for older persons. As used in this subsection, "*housing for older persons*" means housing communities consisting of accommodations intended for either of the following:

a. For ninety percent occupancy by at least one person fifty-five years of age or older per unit, and providing significant facilities and services specifically designed to meet the physical or social needs of such persons.

b. For and occupied solely by persons sixty-two years of age or older.

7. The rental or leasing of a housing accommodation in a building which contains housing accommodations for not more than four families living independently of each other, if the owner resides in one of the housing accommodations for which the owner qualifies for the homestead tax credit under section 425.1.

89 Acts, ch 205, §3,4 SF 56  
NEW subsections 6 and 7

## CHAPTER 601E

### DISTRESS FLAGS AND IDENTIFICATION DEVICES FOR HANDICAPPED

Chapter repealed effective January 1, 1990;  
89 Acts, ch 247, §20, 21; see ch 321L HF 745  
For amendment to §601E.6, effective from April 18, 1989, until January 1, 1990,  
see 89 Acts, ch 27, §2

## CHAPTER 601G

## CITIZENS' AIDE

**601G.9 Powers.**

The citizens' aide may:

1. Investigate, on complaint or on the citizens' aide's own motion, any administrative action of any agency, without regard to the finality of the administrative action, except that the citizens' aide shall not investigate the complaint of an employee of an agency in regard to that employee's employment relationship with the agency. A communication or receipt of information made pursuant to the powers prescribed in this chapter shall not be considered an ex parte communication as described in the provisions of section 17A.17.

2. Prescribe the methods by which complaints are to be made, received, and acted upon; determine the scope and manner of investigations to be made; and, subject to the requirements of this chapter, determine the form, frequency, and distribution of the conclusions and recommendations of the citizens' aide.

3. Request and receive from each agency assistance and information as necessary in the performance of the duties of the office. Notwithstanding section 22.7, pursuant to an investigation the citizens' aide may examine any and all records and documents of any agency unless its custodian demonstrates that the examination would violate federal law or result in the denial of federal funds to the agency. Confidential documents provided to the citizens' aide by other agencies shall continue to maintain their confidential status. The citizens' aide is subject to the same policies and penalties regarding the confidentiality of the document as an employee of the agency. The citizens' aide may enter and inspect premises within any agency's control and may observe proceedings and attend hearings, with the consent of the interested party, including those held under a provision of confidentiality, conducted by any agency unless the agency demonstrates that the attendance or observation would violate federal law or result in the denial of federal funds to that agency. This subsection does not permit the examination of records or access to hearings and proceedings which are the work product of an attorney under section 22.7, subsection 4, or which are privileged communications under section 622.10.

4. Issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence relevant to a matter under inquiry. The citizens' aide, deputies, and assistants of the citizens' aide may administer oaths to persons giving testimony before them. If a witness either fails or refuses to obey a subpoena issued by the citizens' aide, the citizens' aide may petition the district court having jurisdiction for an order directing obedience to the subpoena. If the court finds that the subpoena should be obeyed, it shall enter an order requiring obedience to the subpoena, and refusal to obey the court order is subject to punishment for contempt.

5. Establish rules relating to the operation, organization, and procedure of the office of the citizens' aide. The rules are exempt from chapter 17A and shall be published in the Iowa administrative code.

## CHAPTER 601J

## TRANSPORTATION PROGRAMS

**601J.5 Coordination of transportation services.**

The department of human services, department of elder affairs, and the officers and agents of other state and local governmental units shall assist the department in carrying out section 601J.4, subsections 1 and 2, insofar as the functions of these respective officers and departments are concerned with the health, welfare and safety of any recipient of transportation services.

1. Prior to July 1, 1985 all agencies or organizations purchasing or providing transportation services, except public school transportation, with federal, state or local funds shall comply with section 601J.4.

2. Any agency or organization found to be in noncompliance with section 601J.4 shall be notified in writing by the department of those activities which are not in compliance. The notice shall also provide for a period of thirty days during which compliance with section 601J.4 can be accomplished without penalty or sanction.

3. If noncompliant activities continue after the period of thirty days, the department shall, in cooperation with the attorney general and the director of revenue and finance, initiate the following actions:

a. If the activities that are not in compliance with section 601J.4 are funded with state or federal funds which are administered by the state and can be used by agencies or organizations that are in compliance with section 601J.4, then upon notice by the department, the director of revenue and finance shall not permit the expenditure of ten percent of the funds during fiscal year 1986, an additional twenty percent of funds during the following year, an additional thirty percent during the third year, and the remaining funds in the fourth year that the activities remain in noncompliance. Any funds retained by the director of revenue and finance shall be distributed to agencies and organizations eligible to receive the funds for transportation purposes.

b. If the activities that are not in compliance with section 601J.4 are funded with state, federal or local funds which are not administered by the state or cannot be used by agencies and organizations that are in compliance with section 601J.4, then upon notice by the department, the attorney general shall file an action to enjoin agencies or organizations from expending funds for transportation purposes until and unless compliance with section 601J.4 is achieved. If federal funds are involved in such cases, then the attorney general shall notify the responsible federal agency of the actions and request its cooperation.

c. The department of human services shall not purchase services from any provider which has been denied a certificate of compliance with this chapter from the department.

d. The department of inspections and appeals shall establish an appeal process pursuant to chapters 10A and 17A which allows those agencies or organizations determined to not be in compliance with this chapter an opportunity for a timely hearing before the department of inspections and appeals. A decision by the department of inspections and appeals is subject to review by the state department of transportation. The state department of transportation's decision is the final agency action. Judicial review of the action of the department may be sought in accordance with chapter 17A.

e. The department shall, in accordance with chapter 17A, adopt and enforce rules setting minimum standards for determination of compliance and certification. The rules and standards required by this section shall be formulated in consultation with all affected state agencies, local government units with profes-

sional and consumer groups affected, and shall be designed to further the accomplishment of the purposes of this chapter.

89 Acts, ch 273, §40 HF 163  
Subsection 3, paragraph d 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 of criminal and juvenile justice planning.
8. Division on the status of blacks.

89 Acts, ch 83, §78 SF 112  
NEW subsection 8

#### 601K.32 Policy for children, youth, and families.

It is the policy of the state of Iowa to promote the best interests of children, youth, and families. To further this policy there is created a division of children, youth, and families and the commission on children, youth, and families. The division of children, youth, and families shall:

1. Promote coordination of federal, state and local services by developing a plan to streamline delivery of services and making recommendations to the governor and general assembly by December 1 of each year.
  2. Work with state agencies in an advisory capacity to help plan needed services for children, youth, and their families.
  3. Provide the administrator, general assembly and governor with recommendations and information to improve services for children, youth, and their families by December 1 of each year.
  4. Identify state and federal resources that can be used in local areas; and
  5. Provide information to parents to assist and support them in their parenting roles.
  6. Cooperate with the department of economic development in connection with that department's collection, assembly, and dissemination of information on the changing composition of the Iowa family, the level of poverty among different age groups and different family structures in Iowa society, and the changing composition of the Iowa work force and the impact of those changes on Iowa families.
- The commission shall examine the following issues related to the cycle of dependency which some families have on services, including, but not limited to, child care, chemical dependency, child welfare, youth employment, parent education, health, and education.

89 Acts, ch 209, §3 SF 88  
NEW subsection 6

#### 601K.33 Commission on children, youth, and families.

1. The commission on children, youth, and families is established.
2. The following persons or a designee are members of the commission:
  - a. The director of the department of human services.
  - b. The director of the department of public health.
  - c. The director of the department of education.

- d. The director of the department of corrections.
3. The following members of the commission shall be appointed by the governor:
- a. A member of a county board of supervisors.
  - b. A member of the board of directors of a school corporation.
  - c. One citizen, who shall be a professional family counselor.
  - d. Seven citizens who have expertise in the areas of child care, child welfare, youth employment, maternal and child health, chemical dependency, education, or law.
  - e. A person sixteen through eighteen years of age at the time of appointment.
4. The following shall be nonvoting members of the commission:
- a. Two members of the senate, not more than one from any political party, appointed by the president of the senate.
  - b. Two members of the house of representatives, not more than one from any political party, appointed by the speaker of the house.
  - c. A district court judge appointed by the governor.
5. The members of the commission appointed by the governor shall be appointed to terms of four years beginning May 1. Legislative members shall be appointed to terms of two years beginning January 1 of odd-numbered years. However, members appointed under subsections 3 and 4 shall cease to be members if they no longer hold the office from which they were appointed. Not more than seven of the members appointed under subsection 3 shall belong to the same political party at the time of appointment. A person designated under subsection 2 is appointed for a term of four years beginning May 1 and must be an assistant director, or head of a division, section, or bureau of that agency whose function relates to children, youth, or families while serving on the commission. Vacancies shall be filled in the same manner as the original appointment. Not more than nine of the voting members of the commission shall be of the same gender.

89 Acts, ch 296, §79 SF 141  
Subsection 5 amended

**601K.40 Repeal.** Repealed by 89 Acts, ch 209, §4.SF 88

**601K.80 Advisory council on head injuries.**

1. For purposes of this section, unless the context otherwise requires:
  - a. "Head injury" means "brain injury" as defined in section 135.22.
  - b. "Council" means the advisory council on head injuries.
2. The advisory council on head injuries is established. The following persons or their designees shall serve as ex officio, nonvoting members of the council:
  - a. The director of public health.
  - b. The director of human services and any division administrators of the department of human services so assigned by the director.
  - c. The director of the department of education.
  - d. The chief of the special education bureau of the department of education.
  - e. The administrator of the division of vocational rehabilitation of the department of education.
  - f. The director of the department for the blind.
  - g. The commissioner of insurance.
3. The council shall be composed of a minimum of nine members appointed by the governor in addition to the ex officio members, and the governor may appoint additional members. Insofar as practicable, the council shall include persons with head injuries, family members of persons with head injuries, representatives of industry, labor, business, and agriculture, representatives of federal, state, and local government, and representatives of religious, charitable, fraternal, civic, educational, medical, legal, veteran, welfare, and other professional groups and

organizations. Members shall be appointed representing every geographic and employment area of the state and shall include members of both sexes.

4. Members of the council appointed by the governor shall be appointed for terms of two years. Vacancies on the council shall be filled for the remainder of the term of the original appointment. Members whose terms expire may be reappointed.

5. The members of the council shall appoint a chairperson and a vice chairperson and other officers as the council deems necessary. The officers shall serve until their successors are appointed and qualified. Members of the council shall receive actual expenses for their services. Members may also be eligible to receive compensation as provided in section 7E.6. The council shall adopt rules pursuant to chapter 17A.

6. The council shall:

a. Promote meetings and programs for the discussion of methods to reduce the debilitating effects of head injuries, and disseminate information in cooperation with any other department, agency, or entity on the prevention, evaluation, care, treatment, and rehabilitation of persons affected by head injuries.

b. Study and review current prevention, evaluation, care, treatment, and rehabilitation technologies and recommend appropriate preparation, training, retraining, and distribution of manpower and resources in the provision of services to persons with head injuries through private and public residential facilities, day programs, and other specialized services.

c. Participate in developing and disseminating criteria and standards which may be required for future funding or licensing of facilities, day programs, and other specialized services for persons with head injuries in this state.

d. Make recommendations to the governor for developing and administering a state plan to provide services for persons with head injuries.

e. Meet at least quarterly.

f. Report on or before February 15 of each year to the governor and the general assembly on council activities, and submit recommendations believed necessary to promote the welfare of persons with head injuries.

7. The council is assigned to the division for administrative purposes. The administrator shall be responsible for budgeting, program coordination, and related management functions.

8. The council may receive gifts, grants, or donations made for any of the purposes of its programs and disburse and administer them in accordance with their terms and under the direction of the administrator.

89 Acts, ch 320, §11 HF 775  
NEW section

**601K.81 through 601K.90 Reserved.**

**601K.98 Audit.**

Each community action agency shall be audited annually but shall not be required to obtain a duplicate audit to meet the requirements of this section. In lieu of an audit by the auditor of state, the community action agency may contract with or employ a certified public accountant to conduct the audit, pursuant to the applicable terms and conditions prescribed by sections 11.6 and 11.19 and an audit format prescribed by the auditor of state. Copies of each audit shall be furnished to the division within three months following the annual audit.

89 Acts, ch 264, §9 HF 451  
Section 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. However, if space is not available in a specific service area without additional cost to the state, the commission may obtain other office space which is colocated with public or private agencies. The space shall be obtained at the lowest cost available and the terms of the lease must be approved by the director of general services.

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.

89 Acts, ch 54, §1 HF 399  
Subsection 2 amended

### **601K.117 Interpretation services account.**

All fees collected by the division for provision of interpretation service by the division to obligated agencies shall be deposited in a separate account within the general operating fund of the division and shall be dedicated to and used by the division for the provision of continued and expanded interpretation services. The commission shall adopt rules which establish a fee schedule for the costs of provision of interpretation services, for collection of the fees, and for disposition of moneys received under this section. Notwithstanding section 8.33, any balance in the separate account at the end of any fiscal year, shall be retained in the account.

89 Acts, ch 320, §12 HF 775  
Section stricken and rewritten

## **CHAPTER 601L**

### **DEPARTMENT FOR THE BLIND**

#### **601L.3 Commission duties.**

The commission shall:

1. Prepare and maintain a complete register of the blind of the state which shall describe the condition, cause of blindness, ability to receive education and industrial training, and other facts the commission deems of value.

2. Assist in marketing of products of blind workers of the state.

3. Ameliorate the condition of the blind by promoting visits to them in their homes for the purpose of instruction and by other lawful methods as the commission deems expedient.

4. Make inquiries concerning the causes of blindness to ascertain what portion of cases are preventable, and cooperate with the other organized agents of the state in the adoption and enforcement of proper preventive measures.

5. Provide for suitable vocational training if the commission deems it advisable and necessary. The commission may establish workshops for the employment of the blind, paying suitable wages for work under the employment. The commission may provide or pay for, during their training period, the temporary lodging and support of persons receiving vocational training. The commission may use receipts or earnings that accrue from the operation of workshops as provided in this chapter, but a detailed statement of receipts or earnings and expenditures shall be made monthly to the director of the department of management.

6. Establish, manage, and control a special training, orientation, and adjustment center or centers for the blind. Training in the centers shall be limited to persons who are sixteen years of age or older, and the department shall not provide or cause to be provided any academic education or training to children under the age of sixteen except that the commission may provide library services to these children. The commission may provide for the maintenance, upkeep, repair, and alteration of the buildings and grounds designated as centers for the blind including the expenditure of funds appropriated for that purpose. Nonresidents may be admitted to Iowa centers for the blind as space is available, upon terms determined by rule.

7. Establish and maintain offices for the department and commission.

8. Accept gifts, grants, devises, or bequests of real or personal property from any source for the use and purposes of the department. Notwithstanding sections 8.33 and 453.7, the interest accrued from moneys received under this section shall not revert to the general fund of the state.

9. Provide library services to blind and physically handicapped persons.

10. Act as a bureau of information and industrial aid for the blind, such as assisting the blind in finding employment.

11. Be responsible for the budgetary and personnel decisions for the department and commission.

12. Whenever the price is reasonably competitive and the quality intended, and in keeping with the schedule established in this subsection, purchase soybean-based inks and starch-based plastics, including but not limited to starch-based garbage can liners.

a. By July 1, 1989, a minimum of fifty percent of the purchases of inks which are used for newsprint paper for printing services performed internally or contracted for by the commission shall be soybean-based.

b. By July 1, 1989, a minimum of fifteen percent of the purchases of garbage can liners made by the commission shall be starch-based plastic garbage can liners. The percentage purchased shall increase by five percent annually until fifty percent of the purchases of garbage can liners are purchases of starch-based plastic garbage can liners.

c. The commission shall report to the general assembly on January 1 of each year, the plastic products which are regularly purchased by the commission for which starch-based product alternatives are available. The report shall also include the cost of the plastic products purchased and the cost of the starch-based product alternatives.

13. In conjunction with the recommendations made by the department of natural resources, purchase and use recycled printing and writing paper in accordance with the schedule established in section 18.18; establish a wastepaper recycling program, the schedule established in section 18.20; in accordance with the recommendations made by the department of natural resources and requirements of section 18.20; comply with the recycling goal, recycling schedule, and ultimate termination of purchase and use of polystyrene products for the purpose of storing, packaging, or serving food for

immediate consumption pursuant to section 455D.16; and, in accordance with section 18.6, require product content statements, the provision of information regarding on-site review of waste management in product bidding and contract procedures, and compliance with requirements regarding contract bidding.

89 Acts, ch 83, §79 SF 112; 89 Acts, ch 272, §39 HF 753  
 Subsection 11 amended  
 NEW subsection 13

## 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, including juvenile court activities 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.

### 602.1216 Retention of clerks of the district court.

A clerk of the district court shall stand for retention in office, in the county of the clerk's office, upon the petition of ten percent of all qualified electors in the county to the state commissioner of elections, at the judicial election in 1988 and every four years thereafter, under sections 46.17 through 46.24. The petition shall be filed in the office of the state commissioner not later than one hundred twenty days before the general election. A clerk who is not retained in office is ineligible to serve as clerk, in the county in which the clerk was not retained, for the four years following the retention vote.

89 Acts, ch 136, §74 SF 371  
Section amended

### 602.1301 Budget and fiscal procedures.

1. The supreme court shall prepare an annual operating budget for the department, and shall submit a budget request to the general assembly for the fiscal period for which the general assembly is appropriating funds.

2. a. As early as possible, but not later than December 1, the supreme court shall submit to the legislative fiscal bureau the annual budget request and detailed supporting information for the judicial department. The submission shall be designed to assist the legislative fiscal bureau in its preparation for legislative consideration of the budget request. The information submitted shall contain and be arranged in a format substantially similar to the format specified by the director of management and used by all departments and establishments in transmitting to the director estimates of their expenditure requirements pursuant to section 8.23, except the estimates of expenditure requirements shall be based upon one hundred percent of funding for the current fiscal year accounted for by program, and using the same line item definitions of expenditures as used for the current fiscal year's budget request, and the remainder of the estimate of expenditure requirements prioritized by program. The supreme court shall also make use of the department of management's automated budget system when submitting information to the director of management to assist the director in the transmittal of information as required under section 8.35A.

b. Before December 1, the supreme court shall submit to the director of management an estimate of the total expenditure requirements of the judicial department. The director of management shall submit this estimate received from the supreme court to the governor for inclusion without change in the governor's proposed budget for the succeeding fiscal year. The estimate shall also be submitted to the chairpersons of the committees on appropriations.

3. The state court administrator shall prescribe the procedures to be used by the operating components of the department with respect to the following:

- a. The preparation, submission, review, and revision of budget requests.
- b. The allocation and disbursement of funds appropriated to the department.
- c. The purchase of forms, supplies, equipment, and other property.
- d. Other matters relating to fiscal administration.

4. The state court administrator shall prescribe practices and procedures for the accounting and internal auditing of funds of the department, including uniform practices and procedures to be used by judicial officers and court employees with respect to all funds, regardless of source.

89 Acts, ch 316, §19 HF 772  
Subsection 2, paragraph a amended

### 602.1505 District court clerk salaries.

The state court administrator shall set the salaries of the clerks of the district court in accordance with the pay plan established under section 602.1401 and within the funds appropriated by the general assembly for that purpose.

89 Acts, ch 40, §1 SF 397  
Section amended

**602.3105 Applications.**

Applications for certification shall be on forms prescribed and furnished by the board and the board shall not require that the application contain a photograph of the applicant. An applicant shall not be denied certification because of age, citizenship, sex, race, religion, marital status, or national origin although the application may require citizenship information. The board may consider the past felony record of an applicant. Character references may be required, but shall not be obtained from certified shorthand reporters.

89 Acts, ch 296, §80 SF 141  
Section amended

**602.3201 Requirement of certification—use of title.**

A person shall not engage in the profession of shorthand reporting unless the person is certified pursuant to this chapter, or otherwise exempted pursuant to section 602.6603, subsection 4. Only a person who is certified by the board may assume the title of certified shorthand reporter, or use the abbreviation C.S.R., or any words, letters, or figures to indicate that the person is a certified shorthand reporter.

89 Acts, ch 296, §81 SF 141  
Section amended

**602.3203 Revocation or suspension.**

A certification may be revoked or suspended if the person is guilty of any 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 shorthand reporting, or engaging in unethical conduct or in a practice that is 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. A copy of the record of conviction or plea of guilty is conclusive evidence.
6. Fraud in representations relating to skill or ability.
7. Use of untruthful or improbable statements in advertisements.

89 Acts, ch 296, §82 SF 141  
Subsection 5 amended

**602.6110 Peer review court—pilot projects.**

1. A peer review court is established as a pilot program to divert youthful offenders from the criminal or juvenile justice systems. The court shall consist of a qualified adult to act as judge with prosecutor, defense counsel, court attendant, clerk, and jury composed of persons ten through seventeen years of age.

2. The jurisdiction of the peer review court extends to those persons ten through seventeen years of age who have committed misdemeanor offenses or delinquent acts which would be misdemeanor offenses if committed by an adult and who have entered a plea of guilty, entered into an informal adjustment agreement, or agreed to the entry of a consent decree to those offenses in district or juvenile court. Those persons may then elect to appear before the peer review court to receive sentence. The peer review court shall not determine guilt or innocence. The peer review court shall only determine the sentence for the offense. The sentence may consist of fines, restrictions for damages, attendance at treatment programs, or community service work or any combination of these. A person appearing before the peer review court may also be required to serve as a juror on the court as a part of the person's sentence.

3. Subject to the agreement of the chief judge of the judicial district, the supreme court shall designate two judicial districts in which to locate a peer

review court pilot project. The chief judge of the district shall appoint a peer review court advisory board. The advisory board shall adopt rules for the peer review court advisory program, shall appoint persons to serve on the peer review court, and shall supervise the expenditure of funds appropriated to the program.

89 Acts, ch 262, §1 HF 71  
NEW section

**602.6302 Appointment of district associate judge in lieu of magistrates.**

1. The chief judge of the judicial district may designate by order of substitution that a district associate judge be appointed pursuant to this section in lieu of magistrates appointed under section 602.6403, subject to the following limitations:

a. The county in which the district associate judge is to be appointed, or the counties in which the district associate judge is to be appointed in combination, must have an apportionment of three or more magistrates.

b. The substitution must not result in a lack of a resident district associate judge or magistrate in one or more of the counties.

c. The substitution must be approved by the supreme court.

d. A majority of district judges in that judicial election district, or in the case of an appointment involving more than one judicial election district in the same judicial district, a majority of the district judges in each judicial election district, must vote in favor of the substitution and find that the substitution will provide more timely and efficient performance of judicial business within that judicial election district.

2. An order of substitution shall not take effect unless a copy of the order is received by the chairperson of the county magistrate appointing commission or commissions no later than May 31 of the year in which the substitution is to take effect. A copy of the order shall also be sent to the state court administrator.

3. For a county in which a substitution order is in effect, the number of magistrates actually appointed pursuant to section 602.6403 shall be reduced by three for each district associate judge substituted under this section. However, if the substitution order is for a district associate judge appointed to more than one county, the reduction of three magistrates shall be as provided in the order of the chief judge of the judicial district. Upon a subsequent reduction in the apportionment of magistrates to the county or counties, the magistrate appointing commission shall further reduce the number of magistrates appointed.

4. a. Except as provided in subsections 1 through 3, a substitution shall not increase or decrease the number of magistrates authorized by this article.

b. A substitution shall not be made where the apportionment of magistrates to a county is insufficient to permit the full reduction in appointments of magistrates as required by subsection 3.

5. If an apportionment by the state court administrator pursuant to section 602.6401 reduces the number of magistrates in the county or counties to less than the number required to be apportioned to allow a substitution order pursuant to subsection 1, or if a majority of the district judges in the judicial election district or districts determines that a substitution is no longer desirable, then the substituted office shall be terminated. However, a reversion pursuant to this subsection, irrespective of cause, shall not take effect until the substitute district associate judge fails to be retained in office at a judicial election or otherwise leaves office, whether voluntarily or involuntarily. Upon the termination of office of that district associate judge, appointments shall be made pursuant to section 602.6403 as necessary to reestablish terms of office as provided in section 602.6403, subsection 4.

**602.6305 Term, retention, qualifications.**

1. District associate judges shall serve initial terms and shall stand for retention in office within the judicial election districts of their residences at the judicial election in 1982 and every four years thereafter, under sections 46.17 to 46.24.

2. A person does not qualify for appointment to the office of district associate judge unless the person is at the time of appointment a resident of the county in which the vacancy exists, licensed to practice law in Iowa, and will be able, measured by the person's age at the time of appointment, to complete the initial term of office prior to reaching age seventy-two. An applicant for district associate judge shall file a certified application form, to be provided by the supreme court, with the chairperson of the county magistrate appointing commission.

3. A district associate judge must be a resident of a county in which the office is held during the entire term of office. A district associate judge shall serve within the judicial district in which appointed, as directed by the chief judge, and is subject to reassignment under section 602.6108.

4. District associate judges shall qualify for office as provided in chapter 63 for district judges.

89 Acts, ch 114, §2 SF 498; 89 Acts, ch 212, §2 HF 791; 89 Acts, ch 296, §83 SF 141  
See Code editor's note to §22.7  
Subsection 2 amended

**602.6403 Appointment and qualification of magistrates.**

1. In June of each year in which magistrates' terms expire, the county magistrate appointing commission shall appoint, except as otherwise provided in section 602.6302, the number of magistrates apportioned to the county by the state court administrator under section 602.6401, and may appoint an additional magistrate when allowed by section 602.6402. The commission shall not appoint more magistrates than are authorized for the county by this article.

2. The magistrate appointing commission for each county shall prescribe the contents of an application, in addition to any application form provided by the supreme court, for an appointment pursuant to this section. The commission shall publicize notice of any vacancy to be filled in at least two publications in the official county newspaper. The commission shall accept applications for a minimum of fifteen days prior to making an appointment, and shall make available during that period of time any printed application forms the commission prescribes.

3. Within thirty days following receipt of notification of a vacancy in the office of magistrate, the commission shall appoint a person to the office to serve the remainder of the unexpired term. For purposes of this section, vacancy means a death, resignation, retirement, or removal of a magistrate, or an increase in the number of positions authorized.

4. The term of office of a magistrate is four years, commencing August 1, 1989. However, the terms of all magistrates in a county are deemed to expire if a substitution under section 602.6302 or the allocation under section 602.6401 results in a reduction in the number of magistrates in a county where the magistrates hold office.

5. The commission shall promptly certify the names and addresses of appointees to the clerk of the district court and to the chief judge of the judicial district. The clerk of the district court shall certify to the state court administrator the names and addresses of these appointees.

6. Before assuming office, a magistrate shall subscribe and file in the office of the state court administrator the oath of office specified in section 63.6.

7. Before the commencement of the term of a magistrate, the members of the magistrate appointing commission may reconsider the appointment. Written notification of the reasons for reconsideration and time and place for the meeting must be sent to the magistrate appointee and the clerk of the district court. The

commission may reconvene and decertify the magistrate appointee for good cause. Notice of the decertification and a statement of the reasons justifying the decertification shall be promptly sent to the clerk of the district court, the chief judge of the judicial district, and the state court administrator.

8. Annually, the state court administrator shall cause a school of instruction to be conducted for magistrates, and each magistrate shall attend prior to the time of taking office unless excused by the chief justice for good cause. A magistrate appointed to fill a vacancy shall attend the first school of instruction that is held following the appointment, unless excused by the chief justice for good cause.

89 Acts, ch 114, §3, 4 SF 498; 89 Acts, ch 212 §3, 4 HF 791  
Transition provisions; 89 Acts, ch 114, §6, 7 SF 498  
Subsections 1, 2 and 4 amended  
NEW subsection 7 and existing subsection 7 renumbered as 8

#### **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 files a certified application form, to be provided by the supreme court, with the chairperson of the county magistrate appointing commission. A person is not qualified for appointment as a magistrate if at the time of appointment the person has reached 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.

89 Acts, ch 114, §5 SF 498; 89 Acts, ch 212, §5 HF 791  
See Code editor's note to §22.7  
Subsection 2 amended

#### **602.6603 Court reporters.**

1. Each district judge shall appoint a court reporter who shall, upon the request of a party in a civil or criminal case, report the evidence and proceedings in the case, and perform all duties as provided by law.

2. Each district associate judge may appoint a court reporter, subject to the approval of the chief judge of the judicial district.

3. If a district judge determines that it is necessary to employ an additional court reporter because of an extraordinary volume of work, or because of the temporary illness or incapacity of a regular court reporter, the district judge may appoint a temporary court reporter who shall serve as required by the district judge.

4. If a regularly appointed court reporter becomes disabled, or if a vacancy occurs in a regularly appointed court reporter position, the judge may appoint a competent uncertified shorthand reporter for a period of time of up to six months, upon verification by the chief judge that a diligent but unsuccessful search has been conducted to appoint a certified shorthand reporter to the position and, in a disability case, that the regularly appointed court reporter is disabled. An uncertified shorthand reporter shall not be reappointed to the position unless the reporter becomes a certified shorthand reporter within the period of appointment under this subsection.

5. Except as provided in subsection 4, a person shall not be appointed to the position of court reporter of the district court unless the person has been certified as a shorthand reporter by the board of examiners under article 3.

6. Each court reporter shall take an oath faithfully to perform the duties of office, which shall be filed in the office of the clerk of district court.

7. A court reporter may be removed for cause with due process by the judicial officer making the appointment.

8. If a judge dies, resigns, retires, is removed from office, becomes disabled, or fails to be retained in office and the judicial vacancy is eligible to be filled, the court reporter appointed by the judge shall serve as a court reporter, as directed by the chief judge or the chief judge's designee, until the successor judge appoints a successor court reporter. The court reporter shall receive the reporter's regular salary and benefits during the period of time until a successor court reporter is appointed or until the currently appointed court reporter is reappointed.

89 Acts, ch 110, §1 SF 406  
Subsection 8 amended

### **602.7103 Referee—procedure.**

1. The chief judge may appoint and may remove for cause with due process a juvenile court referee. The referee shall be an attorney admitted to practice law in this state, and shall be qualified for duties by training and experience.

2. The referee shall have the same jurisdiction to conduct juvenile court proceedings and to issue orders, findings, and decisions as the judge of the juvenile court, except that the referee shall not issue warrants. However, the appointing judge may limit the referee's exercise of juvenile court jurisdiction.

3. The parties to a proceeding heard by the referee are entitled to a review by the judge of the juvenile court of the referee's order, finding, or decision, if the review is requested within ten days after the entry of the referee's order, finding, or decision. A request for review does not automatically stay the referee's order, finding, or decision. The review is on the record only.

89 Acts, ch 296, §84 SF 141  
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 or magistrate of the district court, give written notice to the department of management and the department of revenue and finance of the date of death. The clerk shall also give written notice of the death of a justice of the supreme court, a judge of the court of appeals, or a judge or magistrate of the district court who resides in the clerk's county to the state commissioner of elections, as provided in section 46.12.

5. When money in the amount of five hundred dollars or more is paid to the clerk to be paid to another person and the money is not disbursed within thirty days, notify the person who is entitled to the money or for whose account the money is paid or the attorney of record of the person. The notice shall be given by certified mail within forty days of the receipt of the money to the last known address of the person or the person's attorney and a memorandum of the notice shall be made in the proper record. If the notice is not given, the clerk and the clerk's sureties are liable for interest at the rate specified in section 535.2, subsection 1 on the money from the date of receipt to the date that the money is paid to the person entitled to it or the person's attorney.

6. On each process issued, indicate the date that it is issued, the clerk's name who issued it, and the seal of the court.

7. Upon return of an original notice to the clerk's office, enter in the appearance or combination docket information to show which parties have been served the notice and the manner and time of service.

8. When entering a lien or indexing an action affecting real estate in the clerk's office, enter the year, month, day, hour, and minute when the entry is made. The clerk shall mail a copy of a mechanic's lien to the owner of the building, land, or improvement which is charged with the lien as provided in section 572.8.

9. Enter in the appearance docket a memorandum of the date of filing of all petitions, demurrers, answers, motions, or papers of any other description in the cause. A pleading of any description is considered filed when the clerk entered the date the pleading was received on the pleading and the pleading shall not be taken from the clerk's office until the memorandum is made. The memorandum shall be made before the end of the next working day. Thereafter, when a demurrer or motion is sustained or overruled, a pleading is made or amended, or the trial of the cause, rendition of the verdict, entry of judgment, issuance of execution, or any other act is done in the progress of the cause, a similar memorandum shall be made of the action, including the date of action and the number of the book and page of the record where the entry is made. The appearance docket is an index of each suit from its commencement to its conclusion.

10. When title to real estate is finally established in a person by a judgment or decree of the district court or by decision of an appellate court or when the title to real estate is changed by judgment, decree, will, proceeding, or order in probate, certify the final decree, judgment, or decision under seal of the court to the auditor of the county in which the real estate is located.

11. Reserved.

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. Reserved.

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 employment appeal board as provided in section 88.9, subsection 2.

24. Certify the imposition of a mulct tax against property creating a public nuisance to the auditor as provided in section 99.28.

25. Carry out duties relating to the judicial review of orders of the employment appeal board as provided in section 89A.10, subsection 2.
26. With sufficient surety, approve an appeal bond for judicial review of an order or action of the department of natural resources relating to dams and spillways as provided in section 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 department of corrections 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.
- 105A. Provide written notice to all duly appointed guardians and conservators of their liability as provided in sections 633.633A and 633.633B.
106. Carry out duties relating to the administration of small estates as provided in sections 635.1, 635.7, 635.9, and 635.11.
107. Carry out duties relating to the attachment of property as provided in chapter 639.
108. Carry out duties relating to garnishment as provided in chapter 642.
109. With acceptable surety, approve bonds of the plaintiff desiring immediate delivery of the property in an action of replevin as provided in sections 643.7 and 643.12.

110. Carry out duties relating to the disposition of lost property as provided in chapter 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.

89 Acts, ch 50, §13 HF 693; 89 Acts, ch 83, §80 SF 112; 89 Acts, ch 178, §6 HF 585  
 \*Ch 496A repealed by 89 Acts, ch 288, §195 SF 502  
 Subsection 21 stricken  
 NEW subsection 105A

**602.8103 General powers.**

The clerk may:

1. Administer oaths and take affirmations as provided in section 78.1.
2. Reproduce original records of the court by any reasonably permanent legible means including, but not limited to, reproduction by photographing, photostating, microfilming, and computer cards. The reproduction shall include proper indexing. The reproduced record has the same authenticity as the original record.
3. After the original record is reproduced and after approval of a majority of the judges of the district court by court order, destroy the original records including, but not limited to, dockets, journals, scrapbooks, files, and marriage license applications. The order shall state the specific records which are to be destroyed. An original court file shall not be destroyed until after the contents have been reproduced. As used in this subsection and subsection 4, "destroy" includes the transmission of the original records which are of general historical interest to any recognized historical society or association.
4. Destroy the following original records without prior court order or reproduction except as otherwise provided in this subsection:
  - a. Records including, but not limited to, journals, scrapbooks, and files, forty years after final disposition of the case. However, judgments, decrees, stipulations, records in criminal proceedings, probate records, and orders of court shall not be destroyed unless they have been reproduced as provided in subsection 2.
  - b. Administrative records, after five years, including, but not limited to, warrants, subpoenas, clerks' certificates, statements, praecipes, and depositions.
  - c. Records, dockets, and court files of civil and criminal actions heard in the municipal court which were transferred to the clerk, other than juvenile and adoption proceedings, after a period of twenty years from the date of filing of the actions.
  - d. Original court files on dissolutions of marriage, one year after dismissal by the parties or under R.C.P. 215, Ia. Ct. Rules, 2nd ed.
  - e. Small claims files, one year after dismissal with or without prejudice.
  - f. Uniform traffic citations in the magistrate court or traffic and scheduled violations office, one year after final disposition.
  - g. Court reporters' notes and certified transcripts of those notes in civil cases, ten years after final disposition of the case. For purposes of this section, "final disposition" means one year after dismissal of the case, after judgment or decree without appeal, or after procedendo or dismissal of appeal is filed in cases where appeal is taken.
  - h. Court reporters' notes and certified transcripts of those notes in criminal cases, ten years after dismissal of all charges, or ten years after the expiration of all sentences imposed or the date probation is granted, whichever later occurs. For purposes of this subsection "sentences imposed" include all sentencing options pursuant to section 901.5.
  - i. Court files, as provided by rules prescribed by the supreme court, ten years after final disposition in civil cases, or ten years after expiration of all sentences in criminal cases. For purposes of this paragraph, "purging" means the removal and destruction of documents in the court file which have no legal, administrative, or historical value. Purging shall be done without reproduction of the removed documents. For purposes of this paragraph, "civil cases" does not include divorce, dissolution of marriage, child support, or paternity cases, or juvenile, mental health, probate, or adoption proceedings.

5. Invest money which is paid to the clerk to be paid to any other person in a savings account of a supervised financial organization as defined in section 537.1301, subsection 41, except a credit union operating pursuant to chapter 533. The provisions of chapter 453 relating to the deposit and investment of public funds apply to the deposit and investment of the money except that a supervised financial organization other than a credit union may be designated as a depository and the money shall be available upon demand. The interest earnings shall be paid into the general fund of the state, except as otherwise provided by law.

89 Acts, ch 160, §1 SF 491  
Subsection 3 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 to which a written stipulation is attached at the time of filing containing the agreement of the parties to the terms of the modification, or an appeal or writ of error, forty-five dollars. Four dollars of the fee shall be deposited in the court revenue distribution account established under section 602.8108, and forty-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 filing an application for a license to marry, fifteen dollars. The clerk of the district court shall remit to the treasurer of state five dollars for each marriage license application filed. 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 all fees which have come into the clerk's possession and which are unclaimed pursuant to section 556.8 accompanied by a form prescribed by the treasurer. Claims for payment of the moneys must be filed pursuant to chapter 556.

89 Acts, ch 83, §81 SF 112; 89 Acts, ch 207, §1 SF 434; 89 Acts, ch 287, §7 SF 407  
Moneys remitted to treasurer of state under subsection 4 before July 1, 1989, transferred to unclaimed property trust fund; see §556.18; 89 Acts, ch 287, §8 SF 407  
Subsection 1, paragraphs a and m amended  
Subsection 4 stricken and rewritten

### 602.8106 Certain fees—collection and disposition.

1. Notwithstanding section 602.8105, the fee for the filing and docketing of a complaint or information for a simple misdemeanor is twenty dollars except that the filing and docketing of a complaint or information for a nonscheduled simple misdemeanor under chapter 321 is fifteen dollars. However, a fee for filing and docketing a complaint or information shall not be collected in cases of overtime parking.

2. The clerk shall remit ninety percent of all fines and forfeited bail received from a magistrate or district associate judge to the city that was the plaintiff in any action, and shall provide that city with a statement showing the total number of cases, the total of all fines and forfeited bail collected, and the total of all cases dismissed. The clerk shall deposit the remaining ten percent in the court revenue distribution account established under section 602.8108.

3. The clerk shall remit all fines and forfeited bail received from a magistrate or district associate judge for violation of a county ordinance, except an ordinance relating to vehicle speed or weight restrictions, to the county treasurer of the county that was the plaintiff in the action, and shall provide that county with a statement showing the total number of cases, the total of all fines and forfeited bail collected, and the total of all cases dismissed. However, if a county ordinance provides a penalty for a violation which is also penalized under state law, the fines and forfeited bail collected for the violation of that ordinance shall be deposited in the court revenue distribution account established under section 602.8108.

4. The clerk shall remit all other fines and forfeited bail received from a magistrate to the treasurer of state to be credited to the general fund of the state, except that annually the first two million five hundred thousand dollars in fines which are imposed through vehicle violation citations issued by motor vehicle division personnel at portable and fixed weigh stations in the state which shall be credited to the road use tax fund.

5. All fees and costs for the filing of a complaint or information or upon forfeiture of bail received from a magistrate shall be distributed by the clerk as follows:

a. Two fifths shall be remitted monthly by the clerk to the treasurer of state to be credited to the general fund of the state.

b. Three tenths shall be deposited in the court revenue distribution account established under section 602.8108.

c. Three tenths shall be remitted monthly by the clerk to the treasurer of state to be credited to the judicial retirement fund established under section 602.9104.

89 Acts, ch 293, §17 SF 524  
1989 amendment to subsection 4 effective July 1, 1990; 89 Acts, ch 293, §23 SF 524  
Subsection 4 amended

### 602.9109 Payment of annuities.

Annuities granted under the terms of this article are due and payable in monthly installments on the last business day of each month following the month or other period for which the annuity has accrued and shall continue during the life of the annuitant; and payment of all annuities, refunds, and allowances granted under this article shall be made by checks or warrants drawn and issued

by the director of revenue and finance. Applications for annuities shall be in such form as the director of revenue and finance may prescribe.

89 Acts, ch 228, §8 SF 539  
1989 amendment applies retroactively to January 1, 1989, for tax years beginning on or after that date; 89 Acts, ch 228, §10 SF 539  
Section amended

### **602.9203 Senior judgeship requirements.**

1. A supreme court judge, court of appeals judge, district judge or district associate judge, who qualifies under subsection 2 may become a senior judge by filing with the clerk of the supreme court a written election in the form specified by the court administrator. The election shall be filed within six months of the date of retirement.

2. A judicial officer referred to in subsection 1 qualifies for a senior judgeship if the judicial officer meets all of the following requirements:

a. Retires from office on or after July 1, 1977, whether or not the judicial officer is of mandatory retirement age.

b. Meets the minimum requirements for entitlement to an annuity as specified in section 602.9106. However, a judge who elects to retire prior to attaining the age of sixty-five and who has not had twenty-five years of consecutive service, may serve as a senior judge, but shall not be paid an annuity pursuant to section 602.9204 until attaining age sixty-five.

c. Agrees in writing on a form prescribed by the court administrator to be available as long as the judicial officer is a senior judge to perform judicial duties as assigned by the supreme court for an aggregate period of thirteen weeks out of each successive twelve-month period.

d. Submits evidence to the satisfaction of the supreme court that as of the date of retirement the judicial officer does not suffer from a permanent physical or mental disability which would substantially interfere with the performance of duties agreed to under paragraph "c" of this subsection.

e. Submits evidence to the satisfaction of the supreme court that since the date of retirement the judicial officer has not engaged in the practice of law.

3. The clerk of the supreme court shall maintain a book entitled "Roster of Senior Judges", and shall enter in the book the name of each judicial officer who files a timely election under subsection 1 and qualifies under subsection 2. A person shall be a senior judge upon entry of the person's name in the roster of senior judges and until the person becomes a retired senior judge as provided in section 602.9207, or until the person's name is stricken from the roster of senior judges as provided in section 602.9208, or until the person dies.

4. The supreme court shall cause each senior judge on the roster to actually perform judicial duties during each successive twelve-month period.

5. A judicial officer referred to in subsection 1 who retired from office on or after the date specified in subsection 2 and before July 1, 1979, may become a senior judge by filing with the clerk of court not later than thirty days after July 1, 1979, a written election in the form specified by the court administrator. If prior to July 1, 1979, the judicial officer filed an election to practice law under section 602.1612, the filing of an election under this subsection revokes the election to practice law, and the judicial officer shall divest the judicial officer of any interest in the practice of law within ninety days after July 1, 1979. For purposes of subsection 2, paragraph "d", of this section only, the date of retirement of a judicial officer who files an election under the authority of this subsection shall be deemed to be July 1, 1979.

89 Acts, ch 162, §1 SF 459  
Subsection 2, paragraph b amended

### **602.9204 Annuity of senior judge and retired senior judge.**

A senior judge or a retired senior judge shall not be paid a salary. A senior judge or retired senior judge shall be paid an annuity under the judicial retirement

system in the manner provided in section 602.9109, but computed under this section in lieu of section 602.9107, as follows: The annuity paid to a senior judge or retired senior judge shall be an amount equal to three percent of the current basic salary, as of the time each payment is made, of the office in which the senior judge last served as a judge before retirement as a judge or senior judge, multiplied by the judge's years of service prior to retirement as a judge of one or more of the courts included under this article, for which contributions were made to the system, except the annuity of the senior judge or retired senior judge shall not exceed fifty percent of the current basic salary. In addition, if a senior judge is under sixty-five years of age at the time the judge becomes a senior judge, the state shall pay the state's share of the senior judge's medical insurance premium until the judge attains age sixty-five.

89 Acts, ch 162, §2 SF 459  
Section amended

## 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.
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.

89 Acts, ch 83, §82 SF 112  
Subsection 1 amended

#### 613A.4 Claims exempted.

The liability imposed by section 613A.2 shall have no application to any claim enumerated in this section. As to any such claim, a municipality shall be liable only to the extent liability may be imposed by the express statute dealing with such claims and, in the absence of such express statute, the municipality shall be immune from liability.

1. Any claim by an employee of the municipality which is covered by the Iowa workers' compensation law.
2. Any claim in connection with the assessment or collection of taxes.
3. Any claim based upon an act or omission of an officer or employee of the municipality, exercising due care, in the execution of a statute, ordinance, or regulation whether the statute, ordinance or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the municipality or an officer or employee of the municipality, whether or not the discretion is abused.
4. Any claim against a municipality as to which the municipality is immune from liability by the provisions of any other statute or where the action based upon such claim has been barred or abated by operation of statute or rule of civil procedure.

5. Any claim for punitive damages.

6. Any claim for damages caused by a municipality's failure to discover a latent defect in the course of an inspection.

7. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a highway, secondary road, or street as defined in section 321.1, subsection 48, that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing highway, secondary road, or street, to new, changed, or altered design standards. In respect to highways and roads, sealcoating, asphaltting, patching, resurfacing, ditching, draining, repairing, graveling, rocking, blading, or maintaining an existing highway or road does not constitute reconstruction. This subsection shall not apply to claims based upon gross negligence.

8. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a public improvement as defined in section 384.37, subsection 1, or other public facility that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing public improvement or other public facility to new, changed, or altered design standards. This subsection shall not apply to claims based upon gross negligence. This subsection takes effect July 1, 1984 and applies to all cases tried or retried on or after July 1, 1984.

9. Any claim based upon an act or omission by an officer or employee of the municipality or the municipality's governing body, in the granting, suspension, or revocation of a license or permit, where the damage was caused by the person to whom the license or permit was issued, unless the act of the officer or employee constitutes actual malice or a criminal offense.

10. Any claim based upon an act or omission of an officer or employee of the municipality, whether by issuance of permit, inspection, investigation, or otherwise, and whether the statute, ordinance, or regulation is valid, if the damage was caused by a third party, event, or property not under the supervision or control of the municipality, unless the act or omission of the officer or employee constitutes actual malice or a criminal offense.

11. A claim based upon or arising out of an act or omission in connection with an emergency response including but not limited to acts or omissions in connection with emergency response communications services.

12. A claim relating to a swimming pool or spa as defined in section 135I.1 which has been inspected by a municipality or the state in accordance with chapter 135I, or a swimming pool or spa inspection program which has been certified by the state in accordance with that chapter, whether or not owned or operated by a municipality, unless the claim is based upon an act or omission of an officer or employee of the municipality and the act or omission constitutes actual malice or a criminal offense.

The remedy against the municipality provided by section 613A.2 shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the officer, employee or agent whose act or omission gave rise to the claim, or the officer's, employee's, or agent's estate.

This section does not expand any existing cause of action or create any new cause of action against a municipality.

### 613A.7 Insurance.

The governing body of a municipality may purchase a policy of liability insurance insuring against all or any part of liability which might be incurred by the municipality or its officers, employees, and agents under section 613A.2 and section 613A.8 and may similarly purchase insurance covering torts specified in section 613A.4. The governing body of a municipality may adopt a self-insurance program, including but not limited to the investigation and defense of claims, the establishment of a reserve fund for claims, the payment of claims, and the administration and management of the self-insurance program, to cover all or any part of the liability. The governing body of a municipality may join and pay funds into a local government risk pool to protect itself against any or all liability. The governing body of a municipality may enter into insurance agreements obligating the municipality to make payments beyond its current budget year to provide or procure such policies of insurance, self-insurance program, or local government risk pool. The premium costs of the insurance, the costs of a self-insurance program, the costs of a local government risk pool, and the amounts payable under any such insurance agreements may be paid out of the general fund or any available funds or may be levied in excess of any tax limitation imposed by statute. However, for school districts, the costs shall be included in the district management levy as provided in section 296.7. Any independent or autonomous board or commission in the municipality having authority to disburse funds for a particular municipal function without approval of the governing body may similarly enter into insurance agreements, procure liability insurance, adopt a self-insurance program, or join a local government risk pool within the field of its operation. The procurement of such insurance constitutes a waiver of the defense of governmental immunity as to those exceptions listed in section 613A.4 to the extent stated in the policy but shall have no further effect on the liability of the municipality beyond the scope of this chapter, but if a municipality adopts a self-insurance program or joins and pays funds into a local government risk pool such action does not constitute a waiver of the defense of governmental immunity as to the exceptions listed in section 613A.4. The existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of the plaintiff, or lack of any such insurance, shall not be material in the trial of any action brought against the governing body of a municipality, or its officers, employees, or agents and any reference to such insurance, or lack of insurance, is grounds for a mistrial. A self-insurance program or local government risk pool is not insurance and is not subject to regulation under chapters 505 through 523C.

89 Acts, ch 135, §123 HF 535

1989 amendments take effect July 1, 1990, for purpose of computations required for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535

Section amended

### 613A.10 Tax to pay judgment or settlement.

When a final judgment is entered against or a settlement is made by a municipality for a claim within the scope of section 613A.2 or 613A.8, payment shall be made and the same remedies apply in the case of nonpayment as in the case of other judgments against the municipality. If a judgment or settlement is unpaid at the time of the adoption of the annual budget, the municipality shall budget an amount sufficient to pay the judgment or settlement together with interest accruing on it to the expected date of payment. A tax may be levied in excess of any limitation imposed by statute. However, for school districts the costs of a judgment or settlement under this section shall be included in the district management levy pursuant to section 298.4.

89 Acts, ch 135, §124 HF 535

1989 amendments take effect July 1, 1990, for purpose of computations required for school budget year beginning July 1, 1991; 89 Acts, ch 135, §141 HF 535

Section amended

## CHAPTER 617

### MANNER OF COMMENCING ACTIONS

#### 617.13 Real estate in other county.

When any part of real property, the subject of an action, is situated in any other county than the one in which the action is brought, the plaintiff must, in order to affect third persons with constructive notice of the pendency of the action, file with the clerk of the district court of the other county a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the property in that county affected by the action. The clerk shall at once index and enter a memorandum of the notice in the encumbrance book.

89 Acts, ch 83, §83 SF 112  
Section amended

## CHAPTER 618

### PUBLICATION AND POSTING OF NOTICES

#### 618.16 Zoned editions of same newspaper.

Publication requirements for governmental subdivisions of the state shall be deemed satisfied when publication is made in editions or zoned editions which are delivered to an area within the jurisdiction of the subdivision making the publication even though publication is not made in other editions of the same newspaper.

89 Acts, ch 214, §6 HF 728  
Section amended

#### 618.17 Minimum type size.

A publication required by law shall be printed in type no smaller than six point.

89 Acts, ch 214, §7 HF 728  
NEW section

#### 618.18 Timely publication required.

When a publication required by law is not published within one month of submission to the newspaper, the maximum compensation established by law shall be reduced by twenty-five percent.

89 Acts, ch 214, §8 HF 728  
NEW section

## CHAPTER 622

### EVIDENCE

#### 622.84 Subpoenas—enforcing obedience.

1. When, by the laws of this or any other state or country, testimony may be taken in the form of depositions to be used in any of the courts thereof, the person authorized to take the depositions may issue subpoenas for witnesses, which must be served by the same officers and returned in the same manner as is required in district court, and obedience to the subpoenas may be enforced in the same way and to the same extent, or the person may report the matter to the district court who may enforce obedience as though the action was pending in the district court.

2. If a witness is located in any other state or country and refuses to voluntarily submit to the deposition, the court of jurisdiction in this state may, upon the application of any party, petition the court of competent jurisdiction in the foreign

jurisdiction where the witness is located to issue subpoenas or make other appropriate orders to compel the witness' attendance at the deposition.

89 Acts, ch 230, §22 HF 690  
Section amended

## CHAPTER 624

### TRIAL AND JUDGMENT

#### **624.23 Liens of judgments—homesteads—enforceability.**

1. Judgments in the appellate or district courts of this state, or in the circuit or district court of the United States within the state, are liens upon the real estate owned by the defendant at the time of such rendition, and also upon all the defendant may subsequently acquire, for the period of ten years from the date of the judgment.

2. Judgment liens described in subsection 1 do not remain a lien upon real estate of the defendant, platted as a homestead pursuant to section 561.4, unless execution is levied within thirty days of the time the defendant or the defendant's agent has served written demand on the owner of the judgment. The demand shall state that the lien and all benefits derived from the lien as to the real estate platted as a homestead shall be forfeited unless the owner of the judgment levies execution against that real estate within thirty days from the date of service of the demand. Written demand shall be served in any manner authorized for service of original notice under the Iowa rules of civil procedure. A copy of the written demand and proof of service of the written demand shall be recorded in the office of the county recorder of the county where the real estate platted as a homestead is located.

3. Judgment liens described in subsection 1 shall not attach to subsequently acquired real estate owned by the defendant if the personal liability of the defendant on the judgment has been discharged under the bankruptcy laws of the United States.

89 Acts, ch 102, §8 SF 367  
Subsection 2 amended

## CHAPTER 626

### EXECUTIONS

#### **626.80 Time and manner.**

The sale must be at public auction, between nine o'clock in the forenoon and four o'clock in the afternoon, and the hour of the commencement of the sale must be fixed in the notice.

The sheriff shall receive and give a receipt for a sealed written bid submitted prior to the public auction. The sheriff may require all sealed written bids to be accompanied by payment of any fees required to be paid at the public auction by the purchaser, to be returned if the person submitting the sealed written bid is not the purchaser. The sheriff shall keep all written bids sealed until the commencement of the public auction, at which time the sheriff shall open and announce the written bids as though made in person.

89 Acts, ch 123, §1 HF 384  
Section amended

## CHAPTER 626B

## UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

**626B.1 Definitions.**

As used in this chapter unless the context otherwise requires:

1. "*Foreign judgment*" means a judgment, decree, or order of a court of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support of dependents.
2. "*Foreign state*" means any governmental unit other than the United States, a state, district, commonwealth, territory, insular possession of the United States, the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands.

89 Acts, ch 173, §1 SF 111  
NEW section

**626B.2 Application and enforceability.**

This chapter applies to any foreign judgment which is final and conclusive, and enforceable where rendered even though the judgment is subject to an appeal or an appeal from that judgment is pending. Except as provided in section 626B.3, a foreign judgment is conclusive between the parties to the extent that the judgment grants or denies recovery of a sum of money. The final and conclusive foreign judgment is enforceable in the same manner and to the same extent as the judgment of a sister state which is entitled to full faith and credit.

89 Acts, ch 173, §2 SF 111  
NEW section

**626B.3 Inconclusive judgments.**

1. A foreign judgment is not conclusive in any of the following cases:
  - a. The foreign judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law.
  - b. Except as provided in section 626B.4, the court of the foreign state did not have personal jurisdiction over the defendant.
  - c. The court of the foreign state did not have jurisdiction over the subject matter involved in the action.
2. A foreign judgment need not be recognized in any of the following cases:
  - a. The defendant in the proceedings in the court of the foreign state did not receive notice of the proceedings in sufficient time to enable the defendant to defend against the action.
  - b. The foreign judgment was obtained by fraud.
  - c. The cause of action on which the foreign judgment was based is contrary to the public policy of this state.
  - d. The foreign judgment conflicts with a previous, final, and conclusive foreign judgment or other judgment.
  - e. The proceeding in the foreign court was contrary to a settlement agreement entered into between the parties prior to the foreign judgment's being rendered by the court in the foreign state.
  - f. The court where the plaintiff is seeking to enforce the foreign judgment determines that jurisdiction in the court of the foreign state was based upon personal service only, and the doctrine of *forum non conveniens* applies to the original action.

89 Acts, ch 173, §3 SF 111  
NEW section

**626B.4 Personal jurisdiction.**

1. A foreign judgment shall not be refused recognition in a court of this state for lack of personal jurisdiction if any of the following occurred:

- a. The defendant was served personally in the foreign state.
  - b. The defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or for the purpose of contesting jurisdiction of the court in the foreign state over the defendant.
  - c. The defendant, prior to the commencement of the proceedings in the court of the foreign state, had agreed to submit to the jurisdiction of that court in the action concerning the subject matter involved.
  - d. The defendant was domiciled, had its principal place of business, or otherwise had acquired corporate status in the foreign state when the proceedings were instituted.
  - e. The defendant had a business office in the foreign state and the proceedings in the court of the foreign state involved a cause of action arising out of business done by the defendant through that office in the foreign state.
  - f. The defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a cause of action arising out of that operation.
2. A court of this state may recognize other bases of jurisdiction.

89 Acts, ch 173, §4 SF 111  
NEW section

#### **626B.5 Effect of appeal.**

Upon satisfactory proof by the defendant that an appeal is pending or that the defendant is entitled to and intends to appeal the foreign judgment, the court may stay the proceedings until the appeal has been determined or until a sufficient period of time has expired during which the defendant could have commenced an appeal in the court of the foreign state.

89 Acts, ch 173, §5 SF 111  
NEW section

#### **626B.6 Other foreign judgments.**

This chapter does not prevent the recognition of a foreign judgment by a court of this state in a situation not specifically covered in this chapter.

89 Acts, ch 173, §6 SF 111  
NEW section

#### **626B.7 Uniformity of interpretation.**

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

89 Acts, ch 173, §7 SF 111  
NEW section

#### **626B.8 Short title.**

This chapter may be cited as the uniform foreign money-judgments recognition Act.

89 Acts, ch 173, §8 SF 111  
NEW section

## **CHAPTER 631**

### **SMALL CLAIMS**

#### **631.6 Fees and costs.**

All fees and costs required to be paid in small claims actions shall be paid in advance, and shall be assessed as costs in the action.

1. The docket fee for a small claims action is fifteen dollars. Five dollars of the docket fee shall be deposited in the court revenue distribution account established under section 602.8108 and ten dollars of the fee shall be paid into the state

treasury. Of the amount paid into 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.

2. Postage charged for the mailing of original notices shall be the actual cost of the postage.

3. Fees for personal service by peace officers or other officials of the state are the amounts specified by law.

4. Fees for service of notice on nonresidents are as provided in section 617.3.

All fees and costs collected in small claims actions, other than the ten dollars of the docket fee to be paid into the state treasury, shall be deposited in the court revenue distribution account established under section 602.8108, except that the fee specified in subsection 4 shall be remitted to the secretary of state.

89 Acts, ch 83, §84 SF 112  
Unnumbered paragraph 2 amended

## CHAPTER 633

### PROBATE CODE

#### 633.27A Docketing guardianship and conservatorship proceedings.

When a petition is filed for a conservatorship or guardianship, or a combined petition as provided in section 633.627, the administration thereof shall be treated as a separate proceeding, with a separate docket number, from the date of the filing of the petition. The clerk shall clearly indicate on the docket whether the proceedings are voluntary or involuntary and whether a guardianship, a conservatorship, or combined.

89 Acts, ch 178, §7 HF 585  
NEW section

#### 633.31 Calendar—fees in probate.

1. The clerk shall keep a court calendar, and enter thereon such matters as the court may prescribe.

2. The clerk shall charge and collect the following fees in connection with probate matters, which shall be deposited in the court revenue distribution account established under section 602.8108:

a. For services performed in short form probates pursuant to sections 450.22 and 450.44 .....	\$ 15.00
b. For services performed in probate of will without administration ..	15.00
c. For filing and indexing a transcript .....	5.00
d. For taking and approving a bond, or the sureties on a bond .....	20.00
e. For entering a rule or order .....	10.00
f. For certificate and seal .....	10.00
g. For making a complete record where real estate is sold .....	per 100 words .20
h. For making a transcript or copies of orders or records filed in the clerk's office .....	per 100 words .50
i. For certifying change of title .....	5.00
j. For issuing commission to appraisers .....	2.00
k. For other services performed in the settlement of the estate of any decedent, minor, insane person, or other persons laboring under legal disability, except where actions are brought by the administrator, guardian, trustee, or person	

acting in a representative capacity or against that person, or as may be otherwise provided herein, where the value of the personal property and real estate of such a person falls within the following indicated amounts, the fee opposite such amount shall be charged.

Up to \$3,000.00 .....	5.00
3,000.00 to 5,000.00 .....	10.00
5,000.00 to 7,000.00 .....	15.00
7,000.00 to 10,000.00 .....	20.00
10,000.00 to 15,000.00 .....	25.00
15,000.00 to 25,000.00 .....	30.00
For each additional \$25,000.00 or major fraction thereof .....	25.00
l. For services performed in small estate administration .....	15.00

89 Acts, ch 207, §2 SF 434

Subsection 2, paragraphs a, b, c, f, i, k and l amended

### 633.35 Reports and applications for orders.

All petitions, reports, and applications for orders in probate must be in writing, verified, acknowledged or certified, and self-explanatory. If the petition, report, or application is certified, substantially the following language shall be used: "I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct."

89 Acts, ch 35, §1 SF 275

Section amended

### 633.63 Qualification of fiduciary—resident.

1. Any natural person of full age, who is a resident of this state, is qualified to serve as a fiduciary, except the following:

a. One who is a mental retardate, mentally ill, a chronic alcoholic, or a spendthrift.

b. Any other person whom the court determines to be unsuitable.

2. Banks and trust companies organized under the laws of the United States or state banks, when approved by the superintendent of banking under section 524.1001, and trust companies authorized to engage in trust business pursuant to section 524.1005, are authorized to act in a fiduciary capacity in Iowa.

3. A private nonprofit corporation organized under chapter 504 or 504A is qualified to act as a guardian, as defined in section 633.3, subsection 19, or a conservator, as defined in section 633.3, subsection 7, where the assets subject to the conservatorship are less than fifteen thousand dollars and the corporation does not possess a proprietary or legal interest in an organization which provides direct services to the individual.

89 Acts, ch 178, §8 HF 585; 89 Acts, ch 257, §32 HF 234

Subsection 2 amended

Subsection 3 amended

### 633.230 Notice in intestate estates.

In intestate matters, the administrator, as soon as letters are issued, shall cause to be published once each week for two consecutive weeks in a daily or weekly newspaper of general circulation published in the county in which the estate is pending, and at any time during the pendency of administration that the administrator has knowledge of the name and address of a person believed to own or possess a claim which will not or may not be paid or otherwise satisfied during administration, provide by ordinary mail to each such claimant at the claimant's last known address, a notice of appointment which shall be in substantially the following form:

NOTICE OF APPOINTMENT OF ADMINISTRATOR AND NOTICE TO CREDITORS

In the District Court of Iowa in and for ... County. In the Estate of ..., Deceased Probate No. ....

To All Persons Interested in the Estate of ..., Deceased, who died on or about ..., 19.....:

You are hereby notified that on the ... day of ..., 19....., the undersigned was appointed administrator of the estate.

Notice is hereby given that all persons indebted to the estate are requested to make immediate payment to the undersigned, and creditors having claims against the estate shall file them with the clerk of the above named district court, as provided by law, duly authenticated, for allowance, and unless so filed by the later to occur of four months from the second publication of this notice or one month from the date of the mailing of this notice (unless otherwise allowed or paid) a claim is thereafter forever barred.

Dated this ... day of ..., 19.....

Administrator of the estate

Address

Attorney for the administrator

Address

Date of second publication ... day of ..., 19..... (Date to be inserted by publisher)

89 Acts, ch 35, §2 SF 275 Section amended

633.273 Antilapse statute.

1. If a devisee dies before the testator, the devisee's heirs shall inherit the property devised to the devisee, unless from the terms of the will, the intent is clear and explicit to the contrary.

2. A person who would have been a devisee under a class gift, if the person had survived the testator, is treated as a devisee for purposes of this section, provided the person's death occurred after the execution of the will, unless from the terms of the will, the intent is clear and explicit to the contrary.

89 Acts, ch 130, §1 SF 494 1989 amendment applies to all wills admitted to probate on or after May 4, 1989; 89 Acts, ch 130, §1, 2 SF 494 Section amended

633.304 Notice of probate of will with administration.

On admission of a will to probate, the executor, as soon as letters are issued, shall cause to be published once each week for two consecutive weeks in a daily or weekly newspaper of general circulation published in the county in which the estate is pending and at any time during the pendency of administration that the executor has knowledge of the name and address of a person believed to own or possess a claim which will not or may not be paid or otherwise satisfied during administration, provide by ordinary mail to each such claimant at the claimant's last known address, and as soon as practicable give notice, except to any executor, by ordinary mail to the surviving spouse, each heir of the decedent and each devisee under the will admitted to probate whose identities are reasonably ascertainable, at such persons' last known addresses, a notice of admission of the will to probate and of the appointment of the executor, in which shall be included a notice that any action to set aside the probate

of the will must be brought within the later to occur of four months from the date of the second publication of the notice or one month from the date of mailing of this notice or thereafter be forever barred, and in which shall be included a notice to debtors to make payment, and to creditors having claims against the estate to file them with the clerk within four months from the second publication of the notice, or thereafter be forever barred.

The notice shall be substantially in the following form:

Notice of Probate of Will, of Appointment of Executor,  
and Notice to Creditors

In the District Court of Iowa

in and for ..... County. Probate No. ....

In the Estate of ....., Deceased

To All Persons Interested in the Estate of ....., Deceased,  
who died on or about ....., 19.....:

You are hereby notified that on the ..... day of ....., 19....., the last will and testament of ....., deceased, bearing date of the ..... day of ....., 19....., was admitted to probate in the above named court and that ..... was appointed executor of the estate. Any action to set aside the will must be brought in the district court of said county within the later to occur of four months from the date of the second publication of this notice or one month from the date of mailing of this notice to all heirs of the decedent and devisees under the will whose identities are reasonably ascertainable, or thereafter be forever barred.

Notice is further given that all persons indebted to the estate are requested to make immediate payment to the undersigned, and creditors having claims against the estate shall file them with the clerk of the above named district court, as provided by law, duly authenticated, for allowance, and unless so filed by the later to occur of four months from the second publication of this notice or one month from the date of mailing of this notice (unless otherwise allowed or paid) a claim is thereafter forever barred.

Dated this ..... day of ....., 19.....

.....  
Executor of estate

.....  
Address

.....  
Attorney for executor

.....  
Address

Date of second publication

..... day of ....., 19.....

(Date to be inserted by publisher)

89 Acts, ch 35, §3 SF 275  
Section amended

**633.305 Notice if no administration.**

On admission of a will to probate without administration of the estate, and upon advanced payment of the costs by the proponent, the clerk shall cause to be published, in the manner prescribed in the preceding section, a notice of the admission of the will to probate. As soon as practicable following the admission of the will to probate, the proponent shall give notice of the admission of the will to probate by ordinary mail addressed to the surviving spouse, each heir of the decedent, and each devisee under the will admitted to probate whose identities are reasonably ascertainable, at such persons' last known addresses. The notice of

the admission of the will to probate shall include a notice that any action to set aside the will must be brought within the later to occur of four months from the date of the second publication of the notice or one month from the date of mailing of this notice, or thereafter be barred.

The notice shall be substantially in the following form:

Notice of Proof of Will  
Without Administration

In the District Court of Iowa  
in and for ..... County. Probate No. ....  
In the Estate of ....., Deceased  
To All Persons Interested in the Estate of ....., Deceased,  
who died on or about ....., 19.....:

You are hereby notified that on the ..... day of .....,  
19....., the last will and testament of ....., deceased,  
bearing date of the ..... day of ....., 19....., was admitted  
to probate in the above named court and there will be no present administration  
of the estate. Any action to set aside the will must be brought in the district court  
of the county within the later to occur of four months from the date of the second  
publication of this notice or one month from the date of mailing of this notice to  
all heirs of the decedent and devisees under the will whose identities are  
reasonably ascertainable, or thereafter be forever barred.

Dated this ..... day of ....., 19.....

.....  
Clerk of the district court

.....  
Attorney for estate

.....  
Address

Date of second publication

..... day of ....., 19.....

(Date to be inserted by publisher)

89 Acts, ch 35, §4 SF 275  
Section amended

**633.309 Time within which action must be commenced.**

An action to contest or set aside the probate of a will must be commenced in the court in which the will was admitted to probate within the later to occur of four months from the date of second publication of notice of admission of the will to probate or one month following the mailing of the notice to all heirs of the decedent and devisees under the will whose identities are reasonably ascertainable, at such persons' last known addresses.

89 Acts, ch 35, §5 SF 275  
Section amended

**633.336 Damages for wrongful death.**

When a wrongful act produces death, damages recovered as a result of the wrongful act shall be disposed of as personal property belonging to the estate of the deceased; however, if the damages include damages for loss of services and support of a deceased spouse and parent, the damages shall be apportioned by the court among the surviving spouse and children of the decedent in a manner as the court may deem equitable consistent with the loss of services and support sustained by the surviving spouse and children respectively. If the decedent leaves a spouse, child, or parent, damages for wrongful death shall not be subject to debts and charges of the decedent's estate, except for amounts to be paid to the department of human services for payments made for medical assistance pursu-

ant to chapter 249A, paid on behalf of the decedent from the time of the injury which gives rise to the decedent's death up until the date of the decedent's death.

89 Acts, ch 111, §2 SF 412  
Section amended

### **633.410 Limitation on filing claims against decedent's estate.**

All claims against a decedent's estate, other than charges, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, are forever barred against the estate, the personal representative, and the distributees of the estate, unless filed with the clerk within the later to occur of four months after the date of the second publication of the notice to creditors or, as to each claimant whose identity is reasonably ascertainable, one month after service of notice by ordinary mail to the claimant's last known address. However, notice is not required to be given by mail to any creditor whose claim will be paid or otherwise satisfied during administration and the personal representative may waive the limitation on filing provided under this section. This section does not bar claims for which there is insurance coverage, to the extent of the coverage, or claimants entitled to equitable relief due to peculiar circumstances.

89 Acts, ch 35, §6 SF 275  
Section amended

### **633.434 Payment of debts and charges after expiration of four months' period.**

The personal representative shall, as soon as practicable following appointment, make reasonably diligent efforts to ascertain the names and addresses of all persons believed to own or possess claims against a decedent's estate.

Upon the expiration of the later to occur of four months after the date of the second publication of notice to creditors or one month after the service of the notice by ordinary mail upon all claimants whose identities are reasonably ascertainable, at their last known addresses and whose claims will not or may not be paid or otherwise satisfied during administration, the personal representative shall pay the debts and charges against the estate in accordance with this code. If it appears at any time that the estate is or may be insolvent, that there are insufficient funds on hand, or that there is other good and sufficient cause, the personal representative may report that fact to the court and apply for any order that the personal representative deems necessary.

89 Acts, ch 35, §7 SF 275  
Section amended

### **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.

12. A statement as to whether all statutory requirements pertaining to claims have been complied with and a statement as to whether all claims, including charges, have been paid and whether a lien continues to exist on any property as security for any claim.

89 Acts, ch 35, §8 SF 275  
NEW subsection 12

### **633.557 Appointment of guardian on voluntary petition.**

A guardian may also be appointed by the court upon the verified petition of the proposed ward, without further notice, if the proposed ward is other than a minor under the age of fourteen years, provided the court determines that such an appointment will inure to the best interest of the applicant. However, if an involuntary petition is pending, the court shall be governed by section 633.634. The petition shall provide the proposed ward notice of a guardian's powers as provided in section 633.562.

89 Acts, ch 178, §9 HF 585  
Section amended

### **633.561 Representation.**

1. In a proceeding for the appointment of a guardian, if the proposed ward is an adult and is not the petitioner, the proposed ward is entitled to representation. In a proceeding for the appointment of a guardian, if the proposed ward is a minor or if the proposed ward is an adult under a standby petition, the court shall determine whether, under the circumstances of the case, the proposed ward is entitled to representation. The determination regarding representation shall be made only after notice to the proposed ward is made as the court deems necessary.

2. The court shall ensure that all proposed wards entitled to representation have been provided with notice of the right to representation and right to be personally present at all proceedings and shall make findings of fact in any order of disposition setting out the manner in which notification was provided.

3. If the proposed ward is entitled to representation and is indigent or incapable of requesting counsel, the court shall appoint an attorney to represent the proposed ward. The cost of court appointed counsel for indigents shall be assessed against the county in which the proceedings are pending. For the purposes of this subsection, the court shall find a person is indigent if the person's income and resources do not exceed one hundred fifty percent of the federal poverty level or the person would be unable to pay such costs without prejudicing the person's financial ability to provide economic necessities for the person or the person's dependents.

4. An attorney appointed pursuant to this section shall:

a. Ensure that the proposed ward has been properly advised of the nature and purpose of the proceeding.

b. Ensure that the proposed ward has been properly advised of the ward's rights in a guardianship proceeding.

- c. Personally interview the proposed ward.
  - d. File a written report stating whether there is a return on file showing that proper service on the proposed ward has been made and also stating that specific compliance with paragraphs "a" through "c" has been made or stating the inability to comply by reason of the proposed ward's condition.
  - e. Represent the proposed ward.
  - f. Ensure that the guardianship procedures conform to the statutory and due process requirements of Iowa law.
5. In the event that an order of appointment is entered, the attorney appointed pursuant to this section, to the extent possible, shall:
- a. Inform the proposed ward of the effects of the order entered for appointment of guardian.
  - b. Advise the ward of the ward's rights to petition for modification or termination of the guardianship.
  - c. Advise the ward of the rights retained by the ward.
6. If the court determines that it would be in the ward's best interest to have legal representation with respect to any proceedings in a guardianship, the court may appoint an attorney to represent the ward at the expense of the ward or the ward's estate, or if the ward is indigent the cost of the court appointed attorney shall be assessed against the county in which the proceedings are pending.

89 Acts, ch 178, §10 HF 585  
Subsection 2 amended

### **633.562 Notification of guardianship powers.**

In a proceeding for the appointment of a guardian, the proposed ward shall be given written notice which advises the proposed ward that if a guardian is appointed, the guardian may, without court approval, provide for the care of the ward, manage the ward's personal property and effects, assist the ward in developing self-reliance and receiving professional care, counseling, treatment or services as needed, and ensure that the ward receives necessary emergency medical services. The notice shall also advise the proposed ward that, upon the court's approval, the guardian may change the ward's permanent residence to a more restrictive residence, and arrange for major elective surgery or any other nonemergency major medical procedure. The notice shall clearly advise the proposed ward in boldfaced type of a minimum size of ten points, of the right to counsel and the potential deprivation of the proposed ward's civil rights. In an involuntary guardianship proceeding, the notice shall be served upon the proposed ward with the notice of the filing of the petition as provided in section 633.554.

89 Acts, ch 178, §11 HF 585  
NEW section

### **633.563 to 633.565 Reserved.**

### **633.572 Appointment of conservator on voluntary petition.**

A conservator may also be appointed by the court upon the verified petition of the proposed ward, without further notice, if the proposed ward is other than a minor under the age of fourteen years, provided the court determines that such an appointment will inure to the best interest of the applicant. However, if an involuntary petition is pending, the court shall be governed by section 633.634. The petition shall provide the proposed ward notice of a conservator's powers as provided in section 633.576.

89 Acts, ch 178, §12 HF 585  
Section amended

### **633.575 Representation.**

1. In a proceeding for the appointment of a conservator, if the proposed ward is an adult and is not the petitioner, the proposed ward is entitled to representation.

In a proceeding for the appointment of a conservator, if the proposed ward is a minor or where the proposed ward is an adult under a standby petition, the court shall determine whether, under the circumstances of the case, the proposed ward is entitled to representation. The determination regarding representation shall be made only after notice to the proposed ward is made as the court deems necessary.

2. The court shall ensure that all proposed wards entitled to representation have been provided with notice of the right to representation and right to be personally present at all proceedings and shall make findings of fact in any order of disposition setting out the manner in which notification was provided.

3. If the proposed ward is entitled to representation and is indigent or incapable of requesting counsel, the court shall appoint an attorney to represent the proposed ward. The cost of court appointed counsel for indigents shall be assessed against the county in which the proceedings are pending. For the purposes of this subsection, the court may find a person is indigent if the person's income and resources do not exceed one hundred fifty percent of the federal poverty level or the person would be unable to pay such costs without prejudicing the person's financial ability to provide economic necessities for the person or the person's dependents.

4. An attorney appointed pursuant to this section, to the extent possible, shall:

a. Ensure that the proposed ward has been properly advised of the nature of the proceeding and its purpose.

b. Ensure that the proposed ward has been properly advised of the ward's rights in a conservatorship proceeding.

c. Personally interview the proposed ward.

d. File a written report stating whether there is a return on file showing that proper service on the proposed ward has been made and also stating that specific compliance with paragraphs "a" through "c" has been made or stating the inability to comply by reason of the proposed ward's condition.

e. Represent the proposed ward.

f. Ensure that the conservatorship procedures conform to the statutory and due process requirements of Iowa law.

5. In the event that an order of appointment is entered, the attorney appointed pursuant to this section, to the extent possible, shall:

a. Inform the proposed ward of the effects of the order entered for appointment of conservator.

b. Advise the ward of the ward's rights to petition for modification or termination of conservatorship.

c. Advise the ward of the rights retained by the ward.

6. If the court determines that it would be in the ward's best interest to have legal representation with respect to any proceedings in a conservatorship, the court may appoint an attorney to represent the ward at the expense of the ward or the ward's estate, or if the ward is indigent the cost of the court appointed attorney shall be assessed against the county in which the proceedings are pending.

89 Acts, ch 178, §13 HF 585  
Subsection 2 amended

### **633.576 Notification of conservatorship powers.**

In a proceeding for the appointment of a conservator, the proposed ward shall be given written notice which advises the proposed ward that if a conservator is appointed, the conservator may, without court approval, manage the proposed ward's principal, income, and investments, sue and defend any claim by or against the ward, sell and transfer personal property, and vote at corporate meetings. The notice shall also advise the proposed ward that, upon the court's approval, the conservator may invest the ward's funds, execute leases, make payments to or for the benefit of the ward, support the ward's legal dependents, compromise or settle

any claim, and do any other thing that the court determines is in the ward's best interests. The notice shall clearly advise the proposed ward, in boldfaced type of a minimum size of ten points, of the right to counsel and the potential deprivation of the proposed ward's civil rights. In an involuntary conservatorship proceeding, the notice shall be served upon the proposed ward with the notice of the filing of the petition as provided in section 633.568.

89 Acts, ch 178, §14 HF 585  
NEW section

**633.577 to 633.579** Reserved.

**633.591 Voluntary petition for appointment of conservator—standby basis.**

Any person of full age and sound mind may execute a verified petition for the voluntary appointment of a conservator of the person's property upon the express condition that such petition shall be acted upon by the court only upon the occurrence of an event specified or the existence of a described condition of the mental or physical health of the petitioner, the occurrence of which event, or the existence of which condition, shall be established in the manner directed in said petition. The petition shall advise the proposed ward of a conservator's powers as provided in section 633.576.

89 Acts, ch 178, §15 HF 585  
Section amended

**633.633A Liability of guardians and conservators.**

Guardians and conservators shall not be held personally liable for actions or omissions taken or made in the official discharge of the guardian's or conservator's duties, except for any of the following:

1. A breach of fiduciary duty imposed by this Code.
2. Willful or wanton misconduct in the official discharge of the guardian's or conservator's duties.

89 Acts, ch 178, §16 HF 585  
NEW section

**633.633B Tort liability of guardians and conservators.**

The fact that a person is a guardian or conservator shall not in itself make the person personally liable for damages for the acts of the ward.

89 Acts, ch 178, §17 HF 585  
NEW section

**633.651 Tort liability of conservator.** Repealed by 89 Acts, ch 178, §21. See §633.633B. HF 585.21

**633.672 Payment of court costs in conservatorships.**

No order shall be entered approving an annual report of a conservator until the court costs which have been docketed have been paid or provided for. The court may, upon application, enter an order waiving payment of the court costs in indigent cases. However, if the conservatorship subsequently becomes financially capable of paying any waived costs, the conservator shall immediately pay the costs.

89 Acts, ch 178, §18 HF 585  
Section amended

**633.673 Court costs in guardianships.**

The ward or the ward's estate shall be charged with the court costs of a ward's guardianship, including the guardian's fees and the fees of the attorney for the guardian. The court may, upon application, enter an order waiving payment of the

court costs in indigent cases. However, if the ward or ward's estate becomes financially capable of paying any waived costs, the costs shall be paid immediately.

89 Acts, ch 178, §19 HF 585  
Section amended

### **633.679 Petition to terminate.**

At any time after the appointment of a guardian or conservator, the person under guardianship or conservatorship may apply to the court by petition, alleging that the person is no longer a proper subject thereof, and asking that the guardianship or conservatorship be terminated.

89 Acts, ch 178, §20 HF 585  
Section amended

## **CHAPTER 635**

### **ADMINISTRATION OF SMALL ESTATES**

#### **635.1 When applicable.**

1. When the gross value of the probate and nonprobate property of a decedent subject to the jurisdiction of this state does not exceed fifty thousand dollars in property subject to taxation under section 450.3, upon the petition of the spouse or a child of the decedent, the clerk shall issue to a resident of the state of Iowa designated by the petitioner letters of appointment of executor or administrator for administration of a small estate if either of the following occurs:

a. The decedent dies intestate and is survived by a spouse, or children, or both.

b. The decedent leaves a last will and testament and the only beneficiaries are a spouse, or children, or both.

2. When the gross value of the probate and nonprobate property of a decedent subject to the jurisdiction of this state does not exceed fifteen thousand dollars in property subject to taxation under section 450.3, upon the petition of a parent or grandchild of the decedent the clerk shall issue to a resident of the state of Iowa designated by the petitioner, letters of appointment as executor or administrator for administration of a small estate if either of the following occurs:

a. The decedent dies intestate without a surviving spouse or children but with a surviving parent or parents or surviving grandchild or grandchildren.

b. The decedent dies without a surviving spouse or children and leaves a last will and testament and the only beneficiaries are a surviving parent or parents or surviving grandchild or grandchildren.

3. When the entire estate of the decedent does not exceed the sum of ten thousand dollars after deducting the debts, as defined in chapter 450, upon the petition of a person related within the fourth degree of consanguinity to the decedent, the clerk shall issue to a resident of the state of Iowa designated by the petitioner, letters of appointment as executor or administrator for administration of a small estate if either of the following occurs:

a. The decedent dies intestate without a surviving spouse, issue, or parent, but with heirs that are all within the fourth degree of consanguinity.

b. The decedent dies without a surviving spouse, issue, or parent, and leaves a last will and testament and the only beneficiaries are surviving persons related to the decedent within the fourth degree of consanguinity.

89 Acts, ch 25, §1 SF 506  
Section amended

#### **635.2 Petition requirements.**

The petition for administration of a small estate must contain the following:

1. The name, domicile, and date of death of the decedent.

2. The name and address of the surviving spouse, if any, the name and address of each child of the decedent, the name and address of each parent of the decedent, if the parent is an heir or beneficiary of the decedent, and the name and address of each grandchild of the decedent if the grandchild is an heir or beneficiary of the decedent, unless none are beneficiaries under the will of the decedent, and the name and address of each relative within the fourth degree of consanguinity of the decedent who is an heir or beneficiary of the decedent, unless none are beneficiaries under the will of the decedent.

3. Whether the decedent died intestate or testate, and, if testate, the date of the will.

4. A statement that the probate and nonprobate property of the decedent subject to the jurisdiction of this state does not have an aggregate gross value of more than the amount permitted under the provisions of section 635.1.

5. The name and address of the proposed executor or administrator.

89 Acts, ch 25, §2 SF 506  
Section amended

### **635.7 Report and inventory—excess value and termination.**

The executor or administrator is required to file the report and inventory for which provision is made in section 633.361. Nothing in sections 635.1 to 635.3 shall exempt the executor or administrator from complying with the requirements of section 422.27, 450.22 or 450.58, or the clerk from complying with the requirements of section 633.481. If the inventory and report shows assets subject to the jurisdiction of this state which exceed the total gross value of the amount permitted the small estate under the applicable provision of section 635.1, the clerk shall terminate the letters issued under section 635.1 without prejudice to the rights of persons who delivered property as permitted under section 635.3. The executor or administrator shall then be required to petition for administration of the estate as provided in chapter 633.

89 Acts, ch 25, §3 SF 506  
Section amended

### **635.8 Closing by sworn statement.**

1. Unless an interested person petitions for administration of the estate on a basis other than for a small estate within four months after letters of administration for a small estate are issued, if those letters of administration are not terminated under the provisions of section 635.7, any property of the estate shall then be free of debts and charges, unless a claim has been filed as provided in section 635.13. The executor or administrator is personally liable for the payment of debts and charges against the estate to the extent the assets of the estate would be subject to the payment of those debts and charges under estate administration other than a small estate.

2. The executor or administrator shall file with the court a closing statement within six months from the date of issuance of the letters of appointment, and the closing statement shall be verified or affirmed under penalty of perjury, stating all of the following:

a. To the best knowledge of the person, the gross value of the estate subject to the jurisdiction of this state does not exceed the amount permitted the small estate under the applicable provision of section 635.1.

b. The estate has been fully administered, dispersed, and distributed to persons entitled to the estate and a description of the disbursement and distribution of the estate including an accurate description of all the real estate of which the decedent died seized, stating the nature and extent of the interest in the real estate and its disposition.

c. A copy of the closing statement has been sent to all distributees of the estate and to all known creditors and a full account in writing of the administration of the estate has been furnished to the distributees whose interests are affected.

3. If no actions or proceedings involving the estate are pending in the court sixty days after the closing statement is filed, the estate shall close and the clerk shall discharge the administrator or executor.

4. The closing statement shall include a statement as to the amount of fees paid for services rendered by the executor or administrator and the executor's or administrator's attorney in administration of the estate. The fees for the executor or administrator and the executor's or administrator's attorney shall not be in excess of the fees permitted by section 633.197.

5. A closing statement filed under this section has the same effect as final settlement of the estate under chapter 633.

89 Acts, ch 25, §4 SF 506  
Section amended

### **635.9 Petition for administration on other basis.**

At any time within four months after letters of administration are issued for a small estate, any interested person may petition for appointment of an executor or administrator for administration of the estate other than as a small estate. In that event the clerk shall notify the person holding letters of appointment for administration of a small estate by ordinary mail not less than ten days before a hearing on the petition. The notice shall be directed to the executor or administrator of the small estate at the executor's or administrator's last known address as reflected in the petition filed under section 635.2 or the report and inventory filed under section 633.361, whichever is filed later.

89 Acts, ch 25, §5 SF 506  
Section amended

### **635.13 Notice—claims.**

If a petition for administration of a small estate of a decedent is granted, the notice as provided in section 633.230 or section 633.304 shall indicate administration as a small estate. Creditors having claims against the estate must file them with the clerk within four months from the second publication of the notice. The notice has the same force and effect as in chapter 633.

89 Acts, ch 25, §6 SF 506  
Section amended

### **635.14 Minimum time before distribution.**

The executor or administrator shall not distribute property of the estate not exempt from execution, prior to four months after the issuance of the letters of appointment.

89 Acts, ch 25, §7 SF 506  
Section amended

## **CHAPTER 645**

### **RECOVERY OF MERCHANDISE OR DAMAGES**

#### **645.1 Definitions.**

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

1. "*Mercantile establishment*" includes any place where merchandise is displayed, held, or offered for sale, either retail or wholesale.

2. "*Merchandise*" includes any object, ware, good, commodity, or other similar item displayed or offered for sale.

3. "*Owner*" means an owner of a mercantile establishment and includes an owner's employee acting on behalf of the owner.

89 Acts, ch 99, §1 SF 343  
NEW section

**645.2 Actions for merchandise or damages.**

An action for recovery of merchandise or the purchase price, damages, and costs may be brought by an owner pursuant to this chapter in any court of competent jurisdiction, including a court of small claims if the claim does not exceed jurisdictional limits.

A conviction under chapter 714 is not required as a condition precedent to the maintenance of an action pursuant to this chapter.

89 Acts, ch 99, §2 SF 343  
NEW section

**645.3 Liability.**

1. A person who knowingly and without claim of right wrongfully appropriates, takes possession of, or alters the price indicia of merchandise of a mercantile establishment without the consent of the owner and with the intent to convert the merchandise to the person's own use without having paid the full purchase price for it, is liable for:

a. The return of the merchandise or the purchase price of the merchandise, provided that the merchandise is not evidence in a criminal proceeding under chapter 714.

b. Actual damages for any decrease in value of the merchandise returned.

c. The greater of fifty dollars or actual costs, not to exceed two hundred dollars, incurred by the owner in recovering the merchandise or damages pursuant to this chapter.

2. Damages awarded under this section shall be reduced by any amount received by the owner pursuant to court ordered restitution under chapter 232A or 910.

3. The parent or parents of an unemancipated minor child under the age of eighteen years are liable for any judgment awarded against the child pursuant to subsection 1 in accordance with, and subject to the limits established in, section 613.16.

89 Acts, ch 99, §3 SF 343  
NEW section

**CHAPTER 654****FORECLOSURE OF REAL ESTATE MORTGAGES****654.2C Mediation notice—foreclosure on agricultural property.**

Repealed July 1, 1990; 86 Acts, ch 1214, §29; 89 Acts, ch 108, §1 SF 389.

**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.

Effective March 30, 1989, and notwithstanding subsection 2, the declaration of economic emergency made by the governor on October 1, 1985, is in effect until March 30, 1990. A person eligible to file an application under subsection 2 must file for the continuance by March 30, 1990. Notwithstanding the provisions of the declaration of economic emergency made by the governor on October 1, 1985, real estate used for small business is eligible for a moratorium continuance; 89 Acts, ch 79, §1, 2 SF 174; see also 88 Acts, ch 1017, §1-3; 87 Acts, ch 81, §1; 86 Acts, ch 1216, §11, 12

Footnote amended

## CHAPTER 654A

### FARM MEDIATION

Sections 654A.1 through 654A.14 repealed July 1, 1990; 86 Acts, ch 1214, §29; 89 Acts, ch 108, §1 SF 389  
Legislative findings; 86 Acts, ch 1214, §1

#### 654A.4 Applicability of chapter.

1. This chapter applies to all creditors of a borrower described under subsection 2 with a secured debt against the borrower of twenty thousand dollars or more.
2. This chapter applies to a borrower who is a natural person operating a farm or any corporation, trust, or limited partnership as defined in section 172C.1.

89 Acts, ch 108, §2 SF 389  
Subsection 2 stricken and rewritten

#### 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.

3. Unless the borrower waives mediation, the borrower shall file a list containing at least the name and place of business for each creditor as defined in section 654A.1 or apply for an extension to file the list with the farm mediation service within twenty-one days of the service's receipt of a request for mediation.

89 Acts, ch 108, §3 SF 389  
NEW subsection 3

#### **654A.11 Mediation release.**

1. If an agreement is reached between the borrower and the creditors, the mediator shall draft a written mediation agreement, have it signed by the creditors, and submit the agreement to the farm mediation service.

2. The borrower and the creditors who are parties to the mediation agreement may enforce the mediation agreement as a legal contract. The agreement constitutes a mediation release.

3. If the borrower waives mediation, or if a mediation agreement is not reached, the borrower and the creditors may sign a statement prepared by the mediator that mediation was waived or that the parties did not reach an agreement. If any party does not sign the statement, the mediator shall sign the statement. The statement constitutes a mediation release. Unless the borrower waives mediation, a creditor shall not receive a mediation release until the creditor has participated in at least one mediation meeting.

4. The farm mediation service shall provide by rule a procedure, consistent with chapter 17A, for review of an initial decision by a mediator relating to the issuance of a mediation release. A decision may be reviewed by the administrative head of the service or a designee. Upon final action by the service and exhaustion of administrative remedies, an action for judicial review of a decision by the service may be brought in either the district court of Polk county or in the district court in which the farmer or creditor resides.

89 Acts, ch 108, §4 SF 389  
NEW subsection 4

#### **654A.13 Confidentiality.**

1. All data regarding the finances of individual borrowers and creditors which is created, collected, and maintained by the farm mediation service are not public records under chapter 22.

2. Meetings of the farm mediation service are closed meetings and are not subject to chapter 21.

3. Verbal or written information relating to the mediation process and transmitted between a party to a dispute and the farm mediation service, including a mediator or the mediation staff, or any other person present during any stage of the mediation process conducted by the service, whether reflected in notes, memoranda, or other work products in the case files, is a confidential communication. Mediators and staff members shall not be examined in any judicial or administrative proceeding regarding confidential communications and are not

subject to judicial or administrative process requiring the disclosure of confidential communications.

If a governmental subdivision is a party to a dispute which has been scheduled for a mediation meeting, verbal or written information obtained by the governmental subdivision which was transmitted by the farm mediation service, including a mediator or the mediation staff, or by any other person present during any stage of the mediation process, is confidential for the purposes of chapter 22 and 5 U.S.C. §552 (1970).

This subsection does not apply to information transmitted by a party to a dispute where the farm mediation service, including a mediator or staff member, has reason to believe that the party has given perjured evidence.

89 Acts, ch 108, §5 SF 389  
NEW subsection 3

#### **654A.14 Rules and forms.**

The farm mediation service shall recommend rules to the coordinator. The coordinator shall adopt rules pursuant to chapter 17A to set the compensation of mediators and to implement this chapter. The compensation of the mediators shall be no more than twenty-five dollars per hour, and all parties shall contribute an equal amount of the cost. The coordinator shall adopt voluntary mediation application and mediation request forms.

The coordinator shall adopt rules pursuant to chapter 17A to provide for an hourly mediation fee not to exceed twenty-five dollars per hour per party. The hourly mediation fee may be waived for any party demonstrating financial hardship upon application to the farm mediation service.

89 Acts, ch 108, §6 SF 389  
NEW unnumbered paragraph 2

#### **654A.15 Limitation on liability—immunity from special actions.**

1. A member of the farm mediation staff, including a mediator, employee, or agent of the service, or member of a board for the service, is not liable for civil damages for a statement or decision made in the process of mediation unless the member acts in bad faith, with malicious purpose, or in a manner exhibiting willful and wanton disregard of human rights, safety, or property.

2. A judicial action relating to a matter which is in the mediation process, which seeks an injunction, mandamus, or similar equitable relief shall not be brought against the farm mediation service, including a mediator, employee, or agent of the service, or member of a board for the service.

89 Acts, ch 108, §7 SF 389  
NEW section

## **CHAPTER 655**

### **SATISFACTION OF MORTGAGES**

#### **655.2 Penalty—attorney fees.**

If the mortgagee, mortgagee's personal representative or assignee, or those legally acting for the mortgagee fail to do so within thirty days after being requested in writing after the mortgage has been satisfied in full, that person shall forfeit to the mortgagor or any grantee of the property who has paid the mortgage, the sum of one hundred dollars plus reasonable attorney fees incurred by the mortgagor or grantee in securing the release of the mortgage.

A mortgagor or grantee who has sought relief under the provisions of section 535B.11 is not entitled to attorney fees under this section. A penalty shall not be assessed under this section if penalties have been assessed pursuant to section 535B.11.

89 Acts, ch 253, §1 HF 556  
Section amended

## CHAPTER 656

### FORFEITURE OF REAL ESTATE CONTRACTS

Section 656.8 repealed July 1, 1990; 86 Acts, ch 1214, §29; 89 Acts, ch 108, §1 SF 389

## CHAPTER 663A

### POSTCONVICTION PROCEDURE

#### 663A.3 How to commence proceeding—limitation.

A proceeding is commenced by filing an application verified by the applicant with the clerk of the district court in which the conviction or sentence took place. However, if the applicant is seeking relief under section 663A.2, subsection 6, the application shall be filed with the clerk of the district court of the county in which the applicant is being confined within ninety days from the date the disciplinary decision is final. All other applications must be filed within three years from the date the conviction or decision is final or, in the event of an appeal, from the date the writ of procedendo is issued. However, this limitation does not apply to a ground of fact or law that could not have been raised within the applicable time period. Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and correct. The supreme court may prescribe the form of the application and verification. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the county attorney and the attorney general.

89 Acts, ch 96, §1 SF 253

Effective date of 1989 amendment; applicability and filing deadline; 89 Acts, ch 96, §2 SF 253

Section amended

## CHAPTER 668

### LIABILITY IN TORT—COMPARATIVE FAULT

#### 668.15 Damages resulting from sexual abuse—evidence.

In an action against a person accused of sexual abuse, as defined in section 709.1, by an alleged victim of sexual abuse for damages arising from an injury resulting from the act of sexual abuse, evidence concerning the past sexual behavior of the alleged victim is not admissible.

89 Acts, ch 138, §1 SF 426

NEW section

## CHAPTER 675

### PATERNITY OF CHILDREN AND OBLIGATION FOR SUPPORT

#### 675.25 Form of judgment—contents of support order—costs.

Upon a finding or verdict of paternity pursuant to section 675.24, the court shall establish the father's monthly support payment and the amount of the support debt accrued or accruing pursuant to section 598.21, subsection 4, 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 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.

89 Acts, ch 166, §7 HF 403  
1989 amendment takes effect October 12, 1989  
Section amended

## CHAPTER 682

### SURETIES—FIDUCIARY FUNDS—FEDERALLY INSURED LOANS—TRUSTS

#### 682.23 Authorized securities.

All proposed investments of trust funds by fiduciaries shall first be reported to the court or a judge for approval and be approved and unless otherwise authorized or directed by the court under authority of which the fiduciary acts, or by the will, trust agreement, or other document which is the source of authority, a trustee, executor, administrator, or guardian shall invest all moneys received by such fiduciary, to be by the fiduciary invested, in securities which at the time of the purchase thereof are included in one or more of the following classes:

1. *Federal bonds.* Bonds or other interest-bearing obligations of the United States for the payment of which the faith and credit of the United States is pledged.

2. *Federal bank bonds.* Bonds, notes or other obligations issued by any federal land bank, federal intermediate credit bank, bank for cooperatives, or any or all of the federal farm credit banks, and in bonds issued by any federal home loan bank under the Act of Congress known and cited as the federal Home Loan Bank Act, [12 USC, §1421-1449] and the Acts amendatory thereof.

3. *State bonds.* Bonds or other interest-bearing obligations of any state in the United States for the payment of which the faith and credit of such state is pledged and which state has not defaulted in the payment of any of its bonded debts within the ten preceding years.

4. *Municipal bonds.* Bonds, or other interest-bearing obligations, which are a direct obligation of a county, township, city, school district, or other municipal corporation or district, having power to levy general taxes in the state of Iowa, and also bonds or other interest-bearing obligations which are a direct obligation of a county, township, city, village, school district, or other municipal corporation or district, having power to levy general taxes in any adjoining state, and having a population of not less than five thousand. However, the total funded indebtedness of a municipality enumerated in this subsection shall not exceed ten percent of the assessed value of the taxable property in the municipality, as ascertained by the last assessment for tax purposes, and the municipality or district shall not have defaulted in the payment of any of its bonded indebtedness within the ten preceding years.

5. *Real estate mortgage bonds.* Notes or bonds of any individual secured by a first mortgage on improved real estate located in this state, provided the aggregate amount of such notes and/or bonds secured by such first mortgage, does not exceed fifty percent of the value of the mortgage property as determined by the fiduciary; any such loan may be made in an amount not to exceed seventy-five percentum of the appraised value of the real estate offered as security and for a term not longer than twenty years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize the entire principal of the loan within the period ending on the date of its maturity.

6. *Corporate mortgages.* Notes or bonds of any corporation secured by a first mortgage on improved real estate located in this or any adjoining state upon which no default in payment of principal or interest shall have occurred within

five preceding years provided the aggregate amount of such notes and/or bonds secured by such first mortgage does not exceed fifty percent of the value of the mortgage property as determined by the fiduciary.

7. *Railroad bonds.* Bonds of any railroad corporation which are secured by a first lien mortgage or trust deed upon not less than one hundred miles of main track in the United States and which mortgage or trust deed has been outstanding not less than fifteen years and upon which bonds issued thereunder there has been no default in the payment of principal and/or interest since the date of said such trust deed.

8. *Bonds guaranteed by railroad.* Bonds of any corporation secured by a first lien upon any railroad terminal depot, tunnel, or bridge in the United States used by two or more railroad companies which have guaranteed the payment of principal and interest of such bonds and have otherwise covenanted or agreed to pay the same, provided at least one of said railroad companies meets the following requirements:

a. Has earned net income equal to at least four percent of the par value of its outstanding capital stock for five preceding years, and

b. Has regularly and punctually paid interest and maturing principal on all of its mortgage indebtedness for five preceding years.

c. Has outstanding capital stock of the par value of at least one-third of its total mortgage indebtedness.

9. *Public utility bonds.* Bonds of any corporation supplying either water, electric energy, or artificial manufactured gas or two or more thereof for light, heat, power, water, or other purposes, or furnishing telephone or telegraph service, provided that such bonds are secured by a first mortgage on all property used in the business of the issuing corporation or by a first and refunding mortgage containing provision for retiring all prior liens, and provided further, that the issuing corporation is incorporated within the United States, and if operating entirely outside this state is operating in a state or other jurisdiction having a public utilities commission with regulatory powers, and providing such operating corporation has annual gross earnings of at least one million dollars, seventy-five percent of which gross earnings have come from the sale of water, gas, or electricity, or the rendering of telephone or telegraph service and not more than fifteen percent from any other one kind of business and which corporation has a record on its behalf or for its predecessors or constituent companies, of having officially reported net earnings at least twice its interest charges on all mortgage indebtedness for the period of five years immediately preceding the investment and having outstanding stock the book value of which is not less than two-thirds of its total funded debt, and which corporation shall have all franchises to operate in the territory it serves in which at least seventy-five percent of its gross income is earned, which franchise shall extend at least five years beyond the maturity of such bonds or which have indeterminate permits or agreements with duly constituted public authorities, or in the bonds of any constituent or subsidiary company of any such operating company which are secured by a first mortgage on all property of such constituent or subsidiary company, provided such bonds are to be retired or refunded by a junior mortgage, the bonds of which are eligible hereunder.

10. *Building and loan associations.* Shares of building and loan associations and savings and loan associations, incorporated under the laws of Iowa and in shares of federal savings and loan associations organized under the laws of the United States of America.

11. *Bonds and debentures guaranteed by the federal government.* Bonds, debentures, or other interest-bearing obligations, the payment of which is guaranteed by the United States of America.

12. *Stock in federal government instrumentalities.* Stock in any association or corporation created or which may be created by authority of the United States and as an instrumentality of the United States, when the purchase of said stock is necessary or required as an incident or condition of obtaining a loan from any association or corporation created or which may be created by authority of the United States and as an instrumentality of the United States.

13. *Life, endowment or annuity contracts of legal reserve life insurance companies authorized to do business in Iowa.* The purchase of contracts authorized by this subsection shall be limited to executors or the successors to their powers when specifically authorized by will, and to guardians and trustees, in an amount not to exceed twenty-five percent of the value of the ward's property in possession of the fiduciary. Such contract may be issued on the life or lives of a ward or wards or beneficiary or beneficiaries of a trust fund created by will or trust agreement, or upon the life or lives of persons in whose life or lives such ward or beneficiary has an insurable interest. The proceeds or avails of such contract shall be the sole property of the person or persons whose funds are invested therein.

14. *Limitation as to court-approved investments.* This section does not prohibit investment of such funds in a savings account or time certificate of deposit of a bank or savings and loan association, located within the city or its county of this state and when first approved by the court. However, a city that is the trustee of a cemetery as provided in section 566.14 may invest perpetual care funds in a savings account or certificates of deposit at a bank or savings and loan association, located in this state without court approval.

15. *When court approval not required.* Nothing in this section contained shall be construed as modifying the probate code nor be construed as requiring investments of trust funds by fiduciaries to be reported to any court or judge for approval where the trust agreement or other document under which the fiduciary is acting is not being administered under the jurisdiction of any court or by its terms specifically exempts the fiduciary from reporting any such investments for approval.

16. *Investments included—government obligations.* Federal bonds, federal bank bonds, and bonds and debentures guaranteed by the federal government which are authorized investments under subsections 1, 2, and 11 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 described in subsections 1, 2, and 11 and to repurchase agreements fully collateralized by such United States government obligations, if the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian.

89 Acts, ch 296, §85 SF 141  
Subsection 4 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 commissioner of public safety.
- c. The department of human services for the purposes of section 232.71, subsection 16, section 237.8, subsection 2, section 237A.5, and section 600.8, subsections 1 and 2.

- d. The state racing commission for the purposes of section 99D.8A.
- e. The state lottery division 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.
- g. Licensed private child-caring and child-placing agencies and certified adoption investigators for the purpose of section 237.8, subsection 2, and section 600.8, subsections 1 and 2.
- h. A psychiatric medical institution for children licensed under chapter 135H for the purposes of section 237.8, subsection 2 and section 600.8, subsections 1 and 2.

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 commissioner 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. Notwithstanding any other limitation, the department is authorized to use revenues generated from the fee to employ clerical personnel to process criminal history checks for nonlaw-enforcement purposes.

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.

## CHAPTER 702

### DEFINITIONS

#### 702.11 Forcible felony.

A "*forcible felony*" is any felonious child endangerment, assault, murder, sexual abuse other than sexual abuse in the third degree committed between spouses or in violation of section 709.4, subsection 2, paragraph "c", subparagraph (4), kidnapping, robbery, arson in the first degree, or burglary in the first degree.

89 Acts, ch 138, §2 SF 426  
Section amended

#### 702.17 Sex act.

The term "*sex act*" or "*sexual activity*" means any sexual contact between two or more persons by: penetration of the penis into the vagina or anus; contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person; contact between the finger or hand of one person and the genitalia or anus of another person, except in the course of examination or treatment by a person licensed pursuant to chapter 148, 148C, 150, 150A, 151, or 152; or by use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus.

89 Acts, ch 105, §1 SF 201; 89 Acts, ch 296, §86 SF 141  
Section amended

## CHAPTER 707

### HOMICIDE

#### 707.6A Homicide by vehicle.

1. A person commits a class "D" felony when the person unintentionally causes the death of another by either of the following means:

a. Operating a motor vehicle while under the influence of alcohol or a drug or a combination of such substances or while having an alcohol concentration of .10 or more, in violation of section 321J.2. Upon a plea or verdict of guilty of a violation of this paragraph, the court shall order the state department of transportation to revoke the defendant's motor vehicle license or nonresident operating privileges for a period of six years. The defendant shall surrender to the court any Iowa license or permit and the court shall forward it to the department with a copy of the revocation order.

b. Driving a motor vehicle in a reckless manner with willful or wanton disregard for the safety of persons or property, in violation of section 321.277.

2. A person commits an aggravated misdemeanor when the person unintentionally causes the death of another by operating a motor vehicle in any of the following manners:

a. Drag racing, in violation of section 321.278.

b. Eluding or attempting to elude a pursuing law enforcement vehicle, in violation of section 321.279.

3. As used in this section, "*motor vehicle*" includes any vehicle defined as a motor vehicle in section 321.1.

89 Acts, ch 211, §1 HF 782  
Subsection 1, paragraph a amended

## CHAPTER 708

## ASSAULT

**708.7 Harassment.**

1. A person commits harassment when, with intent to intimidate, annoy or alarm another person, the person does any of the following:

a. Communicates with another by telephone, telegraph, or writing without legitimate purpose and in a manner likely to cause the other person annoyance or harm.

b. Places a simulated explosive or simulated incendiary device in or near a building, vehicle, airplane, railroad engine or railroad car, or boat occupied by another person.

c. Orders merchandise or services in the name of another, or to be delivered to another, without the other person's knowledge or consent.

d. 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 act did not occur.

2. A person commits harassment in the first degree when the person commits harassment involving a threat to commit a forcible felony, or commits harassment and has previously been convicted of harassment three or more times under this section or any similar statute during the preceding ten years.

Harassment in the first degree is an aggravated misdemeanor.

3. A person commits harassment in the second degree when the person commits harassment involving a threat to commit bodily injury, or commits harassment and has previously been convicted of harassment two times under this section or any similar statute during the preceding ten years.

Harassment in the second degree is a serious misdemeanor.

4. Any other act of harassment is harassment in the third degree. Harassment in the third degree is a simple misdemeanor.

89 Acts, ch 226, §1 HF 672  
Section amended

**708.10 Hazing.**

1. a. A person commits an act of hazing when the person intentionally or recklessly engages in any act or acts involving forced activity which endanger the physical health or safety of a student for the purpose of initiation or admission into, or affiliation with, any organization operating in connection with a school, college, or university. Prohibited acts include, but are not limited to, any brutality of a physical nature such as whipping, forced confinement, or any other forced activity which endangers the physical health or safety of the student.

b. For purposes of this section, "*forced activity*" means any activity which is a condition of initiation or admission into, or affiliation with, an organization, regardless of a student's willingness to participate in the activity.

2. A person who commits an act of hazing is guilty of a simple misdemeanor.

3. A person who commits an act of hazing which causes serious bodily injury to another is guilty of a serious misdemeanor.

89 Acts, ch 41, §1 HF 13  
NEW section

## CHAPTER 709

## SEXUAL ABUSE

**709.4 Sexual abuse in the third degree.**

A person commits sexual abuse in the third degree when the person performs a sex act under any of the following circumstances:

1. The act is done by force or against the will of the other participant, whether or not the other participant is the person's spouse or is cohabiting with the person.

2. The act is between persons who are not at the time cohabiting as husband and wife and if any of the following are true:

a. The other participant is suffering from a mental defect or incapacity which precludes giving consent.

b. The other participant is twelve or thirteen years of age.

c. The other participant is fourteen or fifteen years of age and any of the following are true:

(1) The person is a member of the same household as the other participant.

(2) The person is related to the other participant by blood or affinity to the fourth degree.

(3) The person is in a position of authority over the other participant and uses that authority to coerce the other participant to submit.

(4) The person is six or more years older than the other participant.

Sexual abuse in the third degree is a class "C" felony.

89 Acts, ch 138, §3 SF 426  
Section stricken and rewritten

#### **709.14 Lascivious conduct with a minor.**

It is unlawful for a person over eighteen years of age who is in a position of authority over a minor to force, persuade, or coerce a minor, with or without consent, to disrobe or partially disrobe for the purpose of arousing or satisfying the sexual desires of either of them.

Lascivious conduct with a minor is a serious misdemeanor.

89 Acts, ch 105, §2 SF 201  
NEW section

## **CHAPTER 710**

### **KIDNAPPING AND RELATED OFFENSES**

#### **710.11 Purchase or sale of individual.**

A person commits a class "C" felony when the person purchases or sells or attempts to purchase or sell an individual to another person. This section does not apply to a surrogate mother arrangement. For purposes of this section, a "surrogate mother arrangement" means an arrangement whereby a female agrees to be artificially inseminated with the semen of a donor, to bear a child, and to relinquish all rights regarding that child to the donor or donor couple.

89 Acts, ch 116, §1 HF 628  
NEW section

## **CHAPTER 714**

### **THEFT, FRAUD, AND RELATED OFFENSES**

#### **714.1 Theft defined.**

A person commits theft when the person does any of the following:

1. Takes possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof.

2. Misappropriates property which the person has in trust, or property of another which the person has in the person's possession or control, whether such possession or control is lawful or unlawful, by using or disposing of it in a manner which is inconsistent with or a denial of the trust or of the owner's rights in such property, or conceals found property, or appropriates such property to the person's

own use, when the owner of such property is known to the person. Failure by a bailee or lessee of personal property to return the property within seventy-two hours after a time specified in a written agreement of lease or bailment shall be evidence of misappropriation.

3. Obtains the labor or services of another, or a transfer of possession, control, or ownership of the property of another, or the beneficial use of property of another, by deception. Where compensation for goods and services is ordinarily paid immediately upon the obtaining of such goods or the rendering of such services, the refusal to pay or leaving the premises without payment or offer to pay or without having obtained from the owner or operator the right to pay subsequent to leaving the premises gives rise to an inference that the goods or services were obtained by deception.

4. Exercises control over stolen property, knowing such property to have been stolen, or having reasonable cause to believe that such property has been stolen, unless the person's purpose is to promptly restore it to the owner or to deliver it to an appropriate public officer. The fact that the person is found in possession of property which has been stolen from two or more persons on separate occasions, or that the person is a dealer or other person familiar with the value of such property and has acquired it for a consideration which is far below its reasonable value, shall be evidence from which the court or jury may infer that the person knew or believed that the property had been stolen.

5. Takes, destroys, conceals or disposes of property in which someone else has a security interest, with intent to defraud the secured party.

6. Makes, utters, draws, delivers, or gives any check, share draft, draft, or written order on any bank, credit union, person or corporation, and obtains property or service in exchange therefor, if the person knows that such check, share draft, draft or written order will not be paid when presented.

Whenever the drawee of such instrument has refused payment because of insufficient funds, and the maker has not paid the holder of the instrument the amount due thereon within ten days of the maker's receipt of notice from the holder that payment has been refused by the drawee, the court or jury may infer from such facts that the maker knew that the instrument would not be paid on presentation. Notice of refusal of payment shall be by certified mail, or by personal service in the manner prescribed for serving original notices.

Whenever the drawee of such instrument has refused payment because the maker has no account with the drawee, the court or jury may infer from such fact that the maker knew that the instrument would not be paid on presentation.

7. Obtains gas, electricity or water from a public utility or obtains cable television or telephone service from an unauthorized connection to the supply or service line or by intentionally altering, adjusting, removing or tampering with the metering or service device so as to cause inaccurate readings.

8. Any act that is declared to be theft by any provision of the Code.

89 Acts, ch 170, §1 HF 513  
Subsection 7 amended

#### **714.7A Veterans' grave markers.**

A person commits a simple misdemeanor when the person takes possession or control of a veteran's grave marker which was provided pursuant to section 250.16, with the intention to deprive the owner of the marker, regardless of the value of the marker. The person shall also be liable for restitution in an amount equal to three times the cost of the marker to be paid to the county commission of veteran affairs or other person who furnished the marker.

89 Acts, ch 47, §1 SF 360  
NEW section

### 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.

h. "*Water treatment system*" means a device or assembly for which a claim is made that it will improve the quality of drinking water by reducing one or more contaminants through mechanical, physical, chemical, or biological processes or combinations of the processes. As used in this paragraph and in subsection 2, paragraph "h", each model of a water treatment system shall be deemed a distinct water treatment system.

i. "*Contaminant*" means any particulate, chemical, microbiological, or radiological substance in water which has a potentially adverse health effect and for which a maximum contaminant level (MCL) has been specified in the national primary drinking water regulations.

j. "*Label*", as used in subsection 2, paragraph "h", means the written, printed, or graphic matter permanently affixed or attached to or printed on the water treatment system.

k. "*Manufacturer's performance data sheet*" means a booklet, document, or other printed material containing, at a minimum, the information required pursuant to section 714.16, subsection 2, paragraph "h".

l. "*Seller*", as used in subsection 2, paragraph "h", means the person offering the water treatment system for sale, lease, or rent.

m. "*Buyer*", as used in subsection 2, paragraph "h", means the person to whom the water system is being sold, leased, or rented.

n. "*Consummation of sale*" means completion of the act of selling, leasing, or renting.

a. "*Consumer information pamphlet*" means a publication which explains water quality, health effects, quality expectations for drinking water, and the effectiveness of water treatment systems.

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 or the solicitation of contributions for charita-

ble purposes, 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 inseparable 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.

h. It is an unlawful practice for a person to sell, lease, rent, or advertise the sale, lease, or rental of a water treatment system in this state, for which claims or representations of removing health-related contaminants are made, unless the water treatment system:

(1) Has been performance tested by a third-party testing agency that has been authorized by the Iowa department of public health. Alternatively, in lieu of third-party performance testing of the manufacturer's water treatment system, the manufacturer may rely upon the manufacturer's own test data after approval of the data by an accepted third-party evaluator as provided in this subparagraph. The Iowa department of public health shall review the qualifications of a third-party evaluator proposed by the manufacturer. The department may accept or reject a proposed third-party evaluator based upon the required review. If a

third-party evaluator, accepted by the Iowa department of public health, finds that the manufacturer's test data is reliable, adequate, and fairly presented, the manufacturer may rely upon that data to satisfy the requirements of this subparagraph after filing a copy of the test data and the report of the third-party evaluator with the Iowa department of public health. The testing agency shall use, or the evaluator shall review for the use of, approved methods of performance testing determined to be appropriate by the state hygienic laboratory.

(2) Has met the performance testing requirements specified in the testing protocol.

(3) Bears a conspicuous and legible label stating, "IMPORTANT NOTICE - Read the Manufacturer's Performance Data Sheet" and is accompanied by a manufacturer's performance data sheet.

The manufacturer's performance data sheet shall be given to the buyer and shall be signed and dated by the buyer and the seller prior to the consummation of the sale of the water treatment system. The manufacturer's performance data sheet shall contain information including, but not limited to:

(a) The name, address, and telephone number of the seller.

(b) The name, brand, or trademark under which the unit is sold, and its model number.

(c) Performance and test data including, but not limited to, the list of contaminants certified to be reduced by the water treatment system; the test influent concentration level of each contaminant or surrogate for that contaminant; the percentage reduction or effluent concentration of each contaminant or surrogate; where applicable, the maximum contaminant level (MCL) specified in the national primary drinking water regulations; where applicable, the approximate capacity in gallons; where applicable, the period of time during which the unit is effective in reducing contaminants based upon the contaminant or surrogate influent concentrations used for the performance tests; where applicable, the flow rate, pressure, and operational temperature of the water during the performance tests.

(d) Installation instructions.

(e) The recommended operational procedures and requirements necessary for the proper operation of the unit including, but not limited to, electrical requirements; maximum and minimum pressure; flow rate; temperature limitations; maintenance requirements; and where applicable, replacement frequencies.

(f) The seller's limited warranty.

(4) Is accompanied by the consumer information pamphlet compiled by the Iowa department of public health.

The consumer information pamphlet provided to the buyer of a water treatment system shall be compiled by the Iowa department of public health, reviewed annually, and updated as necessary. The consumer information pamphlet shall be distributed to persons selling water treatment systems and the costs of the consumer information pamphlet shall be borne by persons selling water treatment systems. The Iowa department of public health shall adopt rules pursuant to chapter 17A and charge all fees necessary to administer this section.

i. It is an unlawful practice for a person to sell, lease, rent, or advertise the sale, lease, or rental of a water treatment system in this state for which false or deceptive claims or representations of removing health-related contaminants are made.

j. It is an unlawful practice for a person to make any representation or claim that the seller's water treatment system has been approved or endorsed by any agency of the state.

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.

89 Acts, ch 93, §7 HF 506; 89 Acts, ch 129, §1 SF 490  
 Subsection 2, paragraph a, unnumbered paragraph 1 amended  
 Subsection 2, paragraph h, subparagraph 1 amended

#### **714.18 Bond filed.**

Every person, firm, association, or corporation maintaining or conducting in Iowa any such course of instruction, by classroom instruction or by correspondence, or soliciting in Iowa the sale of such course, shall file with the director of the department of education:

1. A continuous corporate surety bond to the state of Iowa in the sum of fifty thousand dollars or ten percent of the total annual tuition collected, whichever is less, conditioned for the faithful performance of all contracts and agreements with students made by such person, firm, association, or corporation, or their salespersons. A person, firm, association, or corporation desiring to file a surety bond based on a percentage of annual tuition shall provide to the director of the department of education, in the form prescribed by the director, a notarized statement attesting to the total amount of tuition collected in the preceding twelve-month period. The director shall determine the sufficiency of the statement and the amount of the bond. Tuition information submitted pursuant to this subsection shall be kept confidential.

If the person, firm, association, or corporation has filed a performance bond with an agency of the United States government pursuant to federal law, the director of the department of education shall reduce the bond required by this subsection by an amount equal to the amount of the federal bond.

The aggregate liability of the surety for all breaches of the conditions of the bond shall not exceed the sum of the bond. The surety on the bond may cancel the bond upon giving thirty days' written notice to the director of the department of education and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation.

The director of the department of education may accept a letter of credit from a bank in lieu of the corporate surety bond required by this subsection.

2. A statement designating a resident agent for the purpose of receiving service in civil actions. In the absence of such designation, service may be had upon the director of the department of education if service cannot otherwise be made in this state.

3. A copy of any catalog, prospectus, brochure, or other advertising material intended for distribution in Iowa. Such material shall state the cost of the course offered, the schedule of refunds for portions of the course not completed, and if no refunds are to be paid, the material shall so state. Any contract induced by advertising materials not previously filed as provided in this chapter shall be voidable on the part of the pupil or any person liable for the tuition provided for in the contract.

89 Acts, ch 240, §6 SF 14  
Subsection 1 amended

### 714.19 Nonapplicability.

None of the provisions of sections 714.17 to 714.22 shall apply to the following:

1. Colleges or universities authorized by the laws of Iowa or any other state or foreign country to grant degrees.
2. Schools of nursing accredited by the board of nurse examiners or an equivalent public board of another state or foreign country.
3. Public schools.
4. Private and nonprofit schools recognized by the department of education or a local school board for the purpose of complying with chapter 299 and employing certified teachers.
5. Nonprofit schools exclusively engaged in training physically handicapped persons in the state of Iowa.
6. Schools and educational programs conducted by firms, corporations, or persons for the training of their own employees, for which no fee is charged.
7. Seminars, refresher courses and schools of instruction sponsored by professional, business, or farming organizations or associations for the members and employees of members of such organizations or associations.
8. Private business schools accredited by the accrediting commission for business schools or an acknowledged accrediting agency.
9. Private college preparatory schools accredited or probationally accredited\* under section 256.11, subsection 13.

89 Acts, ch 240, §7 SF 14

\*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)

Subsection 9 stricken and former subsection 10 renumbered as 9

### 714.25 Disclosure.

For purposes of this chapter, unless the context otherwise requires, "*proprietary school*" means a person offering a course of instruction at the postsecondary level, for profit, that is more than four months in length and leads to a degree, diploma, or license.

A proprietary school located within the state shall, prior to the time a student is obligated for payment of any moneys, inform the student of all of the following:

1. The total cost of the course of instruction as charged by the school.
2. An estimate of any fees which may be charged the student by others which would be required if the student is to successfully complete the course and, if applicable, obtain a degree, diploma, or license.
3. The percentage of students who successfully complete the course, the percentage who terminate prior to completing the course, and the period of time upon which the school has based these percentages. The reporting period shall not

be less than one year in length and shall not extend more than five years into the past.

4. If claims are made by the school as to successful placement of students in jobs upon completion of the course of study, the school shall provide the student with all of the following:

a. The percentage of graduating students who were placed in jobs in fields related to the course of instruction.

b. The percentage of graduating students who went on to further education immediately upon graduation.

c. The percentage of students who, ninety days after graduation, were without a job and had not gone on to further education.

d. The period of time upon which the reports required by paragraphs "a" through "c" were based. The reporting period shall not be less than one year in length and shall not extend more than five years into the past.

5. If claims are made by the school as to income levels of students who have graduated and are working in fields related to the school's course of instruction, the school shall inform the student of the method used to derive such information.

89 Acts, ch 296, §87 SF 141  
NEW unnumbered paragraph 1

## CHAPTER 725

### VICE

#### 725.7 Gaming and betting—penalty.

1. Except as permitted in chapters 99B and 99D, a person shall not do any of the following:

a. Participate in a game for any sum of money or other property of any value.

b. Make any bet.

c. For a fee, directly or indirectly, give or accept anything of value to be wagered or to be transmitted or delivered for a wager to be placed within or without the state of Iowa.

d. For a fee, deliver anything of value which has been received outside the enclosure of a racetrack licensed under chapter 99D to be placed as wagers in the pari-mutuel pool or other authorized systems of wagering.

e. Engage in bookmaking.

2. A person who violates this section is guilty of the following:

a. Illegal gaming in the fourth degree if the sum of money or value of other property involved does not exceed one hundred dollars. Illegal gaming in the fourth degree constitutes the following:

(1) A serious misdemeanor for a first offense.

(2) An aggravated misdemeanor for a second offense.

(3) A class "D" felony for a third offense.

(4) A class "C" felony for a fourth or subsequent offense.

b. Illegal gaming in the third degree if the sum of money or value of other property involved exceeds one hundred dollars but does not exceed five hundred dollars. Illegal gaming in the third degree constitutes the following:

(1) An aggravated misdemeanor for a first offense.

(2) A class "D" felony for a second offense.

(3) A class "C" felony for a third or subsequent offense.

c. Illegal gaming in the second degree if the sum of money or value of other property involved exceeds five hundred dollars but does not exceed five thousand dollars. Illegal gaming in the second degree constitutes the following:

(1) A class "D" felony for a first offense.

(2) A class "C" felony for a second or subsequent offense.

d. Illegal gaming in the first degree if the sum of money or value of other property involved exceeds five thousand dollars. Illegal gaming in the first degree constitutes a class "C" felony.

89 Acts, ch 296, §88 SF 141  
Subsection 2 stricken and rewritten

#### **725.12 Lotteries and lottery tickets—definition.**

If any person make or aid in making or establishing, or advertise or make public a scheme for a lottery; or advertise, offer for sale, sell, negotiate, dispose of, purchase, or receive a ticket or part of a ticket in a lottery or number of a ticket in a lottery; or have in the person's possession a ticket, part of a ticket, or paper purporting to be the number of a ticket of a lottery, with intent to sell or dispose of the ticket, part of a ticket, or paper on the person's own account or as the agent of another, the person commits a serious misdemeanor. However, this section does not prohibit the advertising of a lottery or possession by a person of a lottery ticket, part of a ticket, or number of a lottery ticket from a lottery legally operated or permitted under the laws of another jurisdiction. This section also does not prohibit the advertising of a lottery, game of chance, contest, or activity conducted by a not-for-profit organization that would qualify as tax exempt under section 501 of the Internal Revenue Code, as defined in section 422.3, or conducted as a promotional activity by a commercial organization which is clearly occasional and ancillary to the primary business of that organization.

When used in this section, lottery shall mean any scheme, arrangement, or plan whereby a prize is awarded by chance or any process involving a substantial element of chance to a participant who has paid or furnished a consideration for such chance.

For the purpose of determining the existence of a lottery under this section, a consideration shall be deemed to have been paid or furnished only in such cases where as a direct or indirect requirement or condition of obtaining a chance to win a prize, the participants are required to make an expenditure of money or something of monetary value through a purchase, payment of an entry or admission fee, or other payment or the participants are required to make a substantial expenditure of effort; provided, however, that no substantial expenditure of effort shall be deemed to have been expended by any participant solely by reason of the registration of the participant's name, address, and related information, the obtaining of an entry blank or participation sheet, by permitting or taking part in a demonstration of any article or commodity, by making a personal examination of posted lists of prize winners, or by acts of a comparable nature, whether performed or accomplished in person at any store, place of business, or other designated location, through the mails, or by telephone; and further provided, that no participant shall be required to be present in person or by representative at any designated location at the time of the determination of the winner of the prize, and that the winner shall be notified either by the same method used to communicate the offering of the prize or by regular mail.

89 Acts, ch 48, §1 HF 201  
1989 amendment to first paragraph takes effect May 1, 1990; 89 Acts, ch 48, §2 HF 201  
Unnumbered paragraph 1 amended

#### **725.13 "Bookmaking" defined.**

"Bookmaking" means advancing gambling activity by accepting bets upon the outcome of future contingent events as a business other than as permitted in chapters 99B, 99D, and 99F. These events include, but are not limited to, the results of a trial or contest of skill, speed, power, or endurance of a person or beast or between persons, beasts, fowl, motor vehicles, or mechanical apparatus or upon the result of any chance, casualty, unknown, or contingent event.

89 Acts, ch 67, §27 SF 124  
Section amended

**725.15 Exceptions for legal gambling.**

Sections 725.5 to 725.10 and 725.12 do not apply to a game, activity, ticket, or device when lawfully possessed, used, conducted, or participated in pursuant to chapter 99B, 99E, or 99F.

89 Acts, ch 67, §28 SF 124  
Section amended

**CHAPTER 727****HEALTH, SAFETY AND WELFARE****727.11 Disclosure of information concerning use of videotapes—penalty.**

1. Except as provided in subsection 2, a person engaged in the business of renting, leasing, loaning, or otherwise distributing for a fee videotapes or other like items to individuals for personal use shall not disclose any information which would reveal the identity of an individual renting, leasing, borrowing, or otherwise obtaining through the business a videotape or other like item, except to the extent permitted by the individual as evidenced by the individual's written consent or as otherwise provided in this section.

2. In the absence of consent, the information may be released in any of the following situations:

a. To a criminal justice agency only pursuant to an investigation of a particular person or organization suspected of committing a known crime. The information 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.

b. To the extent reasonably necessary to collect payment for the rental, lease, or other distribution fee for the materials, if the individual has been given written notice that the payment is due and the individual has failed to pay or arrange for payment within a reasonable time after this notice.

c. If the disclosure is for the exclusive purpose of marketing goods and services directly to the consumer. The person disclosing the information shall inform the customer in writing that the customer may, by written notice, require the person to refrain from disclosing the information pursuant to this paragraph.

3. A person who violates this section commits a simple misdemeanor.

89 Acts, ch 296, §89 SF 141  
Section amended

**CHAPTER 728****OBSCENITY****728.1 Definitions.**

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

1. "*Obscene material*" is any material depicting or describing the genitals, sex acts, masturbation, excretory functions or sadomasochistic abuse which the average person, taking the material as a whole and applying contemporary community standards with respect to what is suitable material for minors, would find appeals to the prurient interest and is patently offensive; and the material, taken as a whole, lacks serious literary, scientific, political or artistic value.

2. "*Material*" means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcrip-

tion or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials.

3. "*Disseminate*" means to transfer possession, with or without consideration.

4. "*Knowingly*" means being aware of the character of the matter.

5. "*Sadomasochistic abuse*" means the infliction of physical or mental pain upon a person or the condition of a person being fettered, bound or otherwise physically restrained.

6. "*Minor*" means any person under the age of eighteen.

7. "*Sex act*" means any sexual contact, actual or simulated, either natural or deviate, between two or more persons, or between a person and an animal, by penetration of the penis into the vagina or anus, or by contact between the mouth or tongue and genitalia or anus, or by contact between a finger of one person and the genitalia of another person or by use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus.

8. Unless otherwise provided, "*prohibited sexual act*" means any of the following:

a. A sex act as defined in section 702.17.

b. An act of bestiality involving a minor.

c. Fondling or touching the pubes or genitals of a minor.

d. Fondling or touching the pubes or genitals of a person by a minor.

e. Sadomasochistic abuse of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse.

f. Sadomasochistic abuse of a person by a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse.

g. Nudity of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the nude minor.

9. "*Promote*" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do any of these acts.

89 Acts, ch 263, §1 HF 740  
Subsection 8 amended

#### **728.4 Rental or sale of hard-core pornography.**

A person who knowingly rents, sells, or offers for rental or sale material depicting patently offensive representations of oral, anal, or vaginal intercourse, actual or simulated, involving humans, or depicting patently offensive representations of masturbation, excretory functions, or bestiality, or lewd exhibition of the genitals, which the average adult taking the material as a whole in applying statewide contemporary community standards would find appeals to the prurient interest; and which material, taken as a whole, lacks serious literary, scientific, political, or artistic value, upon conviction is guilty of an aggravated misdemeanor. However, second and subsequent violations of this section by a person who has been previously convicted of violating this section are class "D" felonies. Charges under this section may only be brought by a county attorney or by the attorney general.

89 Acts, ch 263, §2 HF 740  
Section amended

#### **728.12 Sexual exploitation of a minor.**

1. A person commits a class "C" felony when the person employs, uses, persuades, induces, entices, coerces, knowingly permits, or otherwise causes a minor to engage in a prohibited sexual act or in the simulation of a prohibited sexual act if the person knows, has reason to know, or intends that the act or simulated act may be photographed, filmed, or otherwise preserved in a negative, slide, book, magazine, or other print or visual medium. Notwithstanding section 902.9, the court may assess a fine of not more than fifty thousand dollars for each

offense under this subsection in addition to imposing any other authorized sentence.

2. A person commits a class "D" felony when the person knowingly promotes any material visually depicting a live performance of a minor engaging in a prohibited sexual act or in the simulation of a prohibited sexual act. Notwithstanding section 902.9, the court may assess a fine of not more than twenty-five thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

3. A person who knowingly purchases or possesses a negative, slide, book, magazine, or other print or visual medium depicting a minor engaging in a prohibited sexual act or the simulation of a prohibited sexual act commits a serious misdemeanor.

However, this section does not apply to law enforcement officers, court personnel, licensed physicians, licensed psychologists, or attorneys in the performance of their official duties.

89 Acts, ch 263, §3 HF 740  
Section amended

### **728.14 Commercial film and photographic print processor reports of depictions of minors engaged in prohibited sexual acts.**

1. A commercial film and photographic print processor who has knowledge of or observes, within the scope of the processor's professional capacity or employment, a film, photograph, video tape, negative, or slide which depicts a minor whom the processor knows or reasonably should know to be under the age of eighteen, engaged in a prohibited sexual act or in the simulation of a prohibited sexual act, shall report the depiction to the county attorney immediately or as soon as possible as required in this section. The processor shall not report to the county attorney depictions involving mere nudity of the minor, but shall report depictions involving a prohibited sexual act. This section shall not be construed to require a processor to review all films, photographs, video tapes, negatives, or slides delivered to the processor within the processor's professional capacity or employment.

For purposes of this section, "*prohibited sexual act*" means any of the following:

- a. A sex act as defined in section 702.17.
  - b. An act of bestiality involving a minor.
  - c. Fondling or touching the pubes or genitals of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the act.
  - d. Fondling or touching the pubes or genitals of a person by a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the act.
  - e. Sadoomasochistic abuse of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse.
  - f. Sadoomasochistic abuse of a person by a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse.
2. A person who violates this section is guilty of a simple misdemeanor.

89 Acts, ch 263, §4 HF 740  
NEW section

### **728.15 Telephone dissemination of obscene material to minors.**

1. A person shall not knowingly disseminate obscene material by the use of telephones or telephone facilities to a minor. A person who violates this subsection upon conviction is guilty of an aggravated misdemeanor. However, second and subsequent offenses of this subsection by a person who has been previously convicted of violating this subsection are class "D" felonies. As used in this subsection, a "person" excludes any information-access service provider that

merely provides transmission capacity without control over the content of the transmission.

2. It shall be a defense in any prosecution for a violation of subsection 1 by a person who knowingly disseminates obscene material by the use of telephones or telephone facilities to a minor that the defendant has taken either of the following measures to restrict access to the obscene material:

a. Required the person receiving the obscene material to use an authorized access or identification code, as provided by the information provider, before transmission of the obscene material begins, where the defendant has previously issued the code by mailing it to the applicant after taking reasonable measures to ascertain that the applicant was eighteen years of age or older and has established a procedure to immediately cancel the code of any person after receiving notice, in writing or by telephone, that the code has been lost, stolen, or used by persons under the age of eighteen years or that the code is no longer desired.

b. Required payment by credit card before transmission of the obscene material.

3. Any list of applicants or recipients compiled or maintained by an information-access service provider for purposes of compliance with subsection 2 is confidential and shall not be sold or otherwise disseminated except upon order of the court.

89 Acts, ch 263, §5 HF 740  
NEW section

## CHAPTER 801

### CRIMINAL PROCEDURE SCOPE AND DEFINITIONS

#### 801.4 Definitions for titles XXXV to XXXVII.

For the purposes of titles XXXV to XXXVII, unless the context otherwise requires:

1. "*Attorney general*" includes an authorized assistant of the attorney general.
2. "*Charge*" means a written statement presented to a court accusing a person of the commission of a public offense, including but not limited to a complaint, information, or indictment.
3. "*County attorney*" includes an authorized assistant of the county attorney.
4. "*Court*" means a place where justice is administered by a magistrate and includes such magistrate while acting in a judicial capacity.
5. "*Criminal proceeding*" is a proceeding in which a person is accused of a public offense.
6. "*Magistrate*" means all judges of the district court, including district associate judges and judicial magistrates throughout the state.
7. "*Peace officers*", sometimes designated "law enforcement officers", include:
  - a. Sheriffs and their regular deputies who are subject to mandated law enforcement training.
  - b. Marshals and police officers of cities.
  - c. Peace officer members of the department of public safety as defined in chapter 80.
  - d. Parole agents acting pursuant to section 906.2.
  - e. Probation officers acting pursuant to section 602.7202, subsection 4, and section 907.2.
  - f. Special security officers employed by board of regents institutions as set forth in section 262.13.
  - g. Conservation officers as authorized by section 107.13.
  - h. Such employees of the department of transportation as are designated "*peace officers*" by resolution of the department under section 321.477.

i. Employees of an aviation authority designated as “*peace officers*” by the authority under section 330A.8, subsection 16.

j. Such persons as may be otherwise so designated by law.

8. “*Prosecuting attorney*”, sometimes designated “*prosecutor*”, means any attorney who is authorized by law to appear on the behalf of the state in a criminal case, and includes the attorney general, an assistant attorney general, the county attorney, an assistant county attorney, or a special or substitute prosecutor whose appearance is approved by a court having jurisdiction to try the defendant for the offense with which the defendant is charged. In the case of prosecution for a municipal ordinance violation, “*prosecuting attorney*” means a city attorney or an assistant city attorney.

9. The words “*accused person*”, “*accused*”, “*defendant*”, and similar words mean an individual, a public or private corporation, a partnership, or an unincorporated or voluntary association.

10. “*Indigent person*” means a person who is indigent as determined in accordance with section 815.9.

11. “*Complaint*” means a statement in writing, under oath or affirmation, made before a magistrate or district court clerk or clerk’s deputy as the case may be, of the commission of a public offense, and accusing someone thereof. A complaint shall be substantially in the form provided in the Iowa rules of criminal procedure.

12. “*Prosecution*” means the commencement, including the filing of a complaint, and continuance of a criminal proceeding, and pursuit of that proceeding to final judgment on behalf of the state or other political subdivision.

13. “*Indictable offense*” means an offense other than a simple misdemeanor.

89 Acts, ch 182, §11 HF 551

Subsection 7, NEW paragraph i and former paragraph i relettered as j

## CHAPTER 804

### COMMENCEMENT OF ACTIONS—ARREST— DISPOSITIONS OF PRISONERS

#### 804.21 Initial appearance before magistrate—arrest by warrant.

1. A person arrested in obedience to a warrant shall be taken without unnecessary delay before the nearest or most accessible magistrate. The officer shall at the same time deliver to the magistrate the warrant with the officer’s return endorsed on it and subscribed by the officer with the officer’s official title. However, this section, and sections 804.22 and 804.23, do not preclude the release of an arrested person within the period of time the person would otherwise remain incarcerated while waiting to be taken before a magistrate if the release is pursuant to pretrial release guidelines or a bond schedule promulgated by the judicial council. If, however, a person is released pursuant to pretrial release guidelines, a magistrate must, within twenty-four hours of the release, or as soon as practicable on the next subsequent working day of the court, either approve in writing of the release, or disapprove of the release and issue a warrant for the person’s arrest.

2. Where the offense is bailable, the magistrate shall fix bail giving due consideration to the bail endorsed on the warrant or other conditions stipulated on the warrant for the defendant’s appearance in the court which issued the warrant; if such person is not released on bail, the magistrate must redeliver the warrant to the officer, and the officer shall retain custody of the arrested person until the person’s removal to appear before the magistrate who issued the warrant.

3. If the magistrate who issued the warrant is absent or unable to act, the arrested person shall be taken to the nearest or most accessible magistrate in the

judicial district where the offense occurred, and all documents on which the warrant was issued must be sent to such magistrate, or if they cannot be procured, the informant and the informant's witnesses must be subpoenaed to make new affidavits.

4. When the court is not in session, a person arrested and placed in jail may be released on the person's own recognizance with or without other conditions, by the verbal or written order of a judge or magistrate. The verbal order may be communicated by telephone. The judge or magistrate may issue such order of release only upon the request of an attorney or person believed by the judge or magistrate to be reliable.

5. *a.* The judicial council shall promulgate rules and bond levels to be contained within a bond schedule for the release of an arrested person.

*b.* The bond schedule shall not be used unless both the following conditions are met:

- (1) The person was arrested for a crime other than a forcible felony, and
- (2) The courts are not in session.

6. This section does not prevent the release of the arrested person pending initial appearance upon the furnishing of bail in the amount endorsed on the warrant. The initial appearance of a person so released shall be scheduled for a time not more than ten days after the date of release.

89 Acts, ch 83, §85 SF 112  
Subsection 1 amended

## CHAPTER 805

### CITATIONS IN LIEU OF ARREST

#### 805.6 Uniform citation and complaint.

1. *a.* The commissioner of public safety and the director of natural resources, acting jointly, shall adopt a uniform, combined citation and complaint which shall be used for charging all traffic violations in Iowa under state law or local regulation or ordinance, and which shall be used for charging all other violations which are designated by section 805.8 to be scheduled violations. The court costs in cases of parking violations which are denied, and charged and collected pursuant to section 321.236, subsection 1, are eight dollars per court appearance, regardless of the number of parking violations considered at that court appearance. The court costs in scheduled violation cases where a court appearance is not required are ten dollars. The court costs in scheduled violation cases where a court appearance is required are fifteen dollars. This subsection does not prevent the charging of any of those violations by information, by private complaint filed under chapter 804, or by a simple notice of fine where permitted by section 321.236, subsection 1. Each uniform citation and complaint shall be serially numbered and shall be in quintuplicate, and the officer shall deliver the original and a copy to the court where the defendant is to appear, two copies to the defendant, and a copy to the law enforcement agency of the officer. The court shall forward the copy of the uniform citation and complaint in accordance with section 321.207 when applicable.

The uniform citation and complaint shall contain spaces for the parties' names; the address of the alleged offender; the registration number of the offender's vehicle; the information required by section 805.2; a promise to appear as provided in section 805.3 and a place where the cited person may sign the promise to appear; a list of the scheduled fines prescribed by section 805.8, either separately or by group, and a statement of the court costs payable in scheduled violation cases, whether or not a court appearance is required or is demanded; a brief explanation of sections 805.9 and 805.10; and a space where the defendant

may sign an admission of the violation when permitted by section 805.9; and the uniform citation and complaint shall require that the defendant appear before a court at a specified time and place. The uniform citation and complaint also may contain a space for the imprint of a credit card, and may contain any other information which the commissioner of public safety and the director of natural resources may determine.

b. The uniform citation and complaint shall contain the following statement with a space immediately below it for the signature of the person being charged:

I hereby give my unsecured appearance bond in the amount of ..... dollars and enter my written appearance. I agree that if I fail to appear in person or by counsel to defend against the offense charged in this citation the court is authorized to enter a conviction and render judgment against me for the amount of my appearance bond in satisfaction of the penalty plus court costs.

c. Unless the officer issuing the citation arrests the alleged offender, or permits admission or requires submission of bail as provided in section 805.9, subsection 3, the officer shall enter in the blank contained in the statement required by paragraph "b" one of the following amounts and shall require the person to sign the written appearance:

(1) If the offense is one to which a scheduled fine is applicable, an amount equal to one and one-half times the scheduled fine plus court costs.

(2) If the violation charged involved or resulted in an accident or injury to property and the total damages are less than five hundred dollars, the amount of fifty dollars plus court costs.

(3) If the violation is for any offense for which a court appearance is mandatory, the amount of one hundred dollars plus court costs.

d. The written appearance defined in paragraph "b" shall not be used for any offense other than a simple misdemeanor.

2. In addition to those violations which are required by subsection 1 to be charged upon a uniform citation and complaint, a violation of chapter 321 which is punishable as a simple, serious, or aggravated misdemeanor may be charged upon a uniform citation and complaint, whether or not the alleged offender is arrested by the officer making the charge.

3. Supplies of the uniform citation and complaint for municipal corporations, county agencies, and all other agencies shall be paid for out of the budget of the municipal corporation, county, or other agency receiving the fine resulting from use of the citation and complaint.

4. The uniform citation and complaint shall contain a place for the verification of the officer issuing the complaint. The complaint may be verified before the chief officer of the law enforcement agency, or the chief officer's designee, and the chief officer of each law enforcement agency of the state is authorized to designate specific individuals to administer oaths and certify verifications.

5. The commissioner of public safety and the director of the department of natural resources, acting jointly, shall design and publish a compendium of scheduled violations and scheduled fines, containing other information which they deem appropriate, and shall distribute copies to all courts and law enforcement officers and agencies of the state upon request. The cost of the publication shall be paid out of the budget of the department of public safety and out of the budget of the department of natural resources, each budget being liable for half of those costs. Copies shall be made available to individuals upon request, and a charge may be collected which does not exceed the cost of printing.

89 Acts, ch 167, §1 HF 572; 89 Acts, ch 296, §90 SF 141

See Code editor's note

Subsection 1, unnumbered paragraph 2 reinserted

Subsection 1, paragraph c, subparagraph (2) amended

Subsection 3 amended

### 805.7 Traffic and scheduled violations offices—fine collection boxes.

1. *Offices.* Each district court clerk's office shall constitute a traffic and scheduled violations office of the district court. Additional offices may be established at other locations, as needed, if authorized by the chief judge of the district.

2. *Collection boxes.* The chief judge of the district may permit the maintenance of locked collection boxes to be used at weigh stations and other locations where vehicles are inspected and weighed with portable scales. The boxes shall be used solely for the deposit of fines, costs, and guaranteed arrest bond certificates received for scheduled violations applicable to commercial carriers. The collection boxes shall remain locked at all times and shall be opened only by the clerk of the district court or the clerk's designee. The chief judge of the district may prescribe procedures for the system and may discontinue its use if necessary.

89 Acts, ch 296, §91 SF 141  
Subsection 2 amended

### 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, subsections 1 through 8, 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* For obtaining, possessing, or having in one's control or one's premises a motor vehicle license, a nonoperator's identification card, or a blank motor vehicle license form in violation of section 321.216, subsection 7 or 8, the scheduled fine is fifty dollars.

*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* Reserved.

*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.

*u* For failure of having a bicycle safety flag on a motorized bicycle in violation of section 321.275, subsection 9, the scheduled fine is five 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.

89 Acts, ch 84, §3 SF 121; 89 Acts, ch 184, §2, 3 HF 663; 89 Acts, ch 247, §19 HF 745  
Former paragraph "s" of subsection 2 stricken effective January 1, 1990; 89 Acts, ch 247, §21; see ch 321L HF 745

Subsection 2, paragraph h amended

Subsection 2, NEW paragraphs p and u

Subsection 2, paragraph s stricken

**805.10 Required court appearance.**

Section 805.9 shall not apply to a scheduled violation in any of the following circumstances:

1. When the violation charged involved or resulted in an accident or injury to property and the total damages are five hundred dollars or more, or in an injury to person.

2. When the violation created an immediate threat to the safety of other persons or property because of highway conditions, visibility, traffic, repetition, or other circumstances.

In such cases, the defendant shall appear before the court and regular procedure shall apply. If an information is used the officer shall endorse thereon, "Court appearance required." If a citation and complaint is used, the officer shall strike out the space in which the defendant may admit the violation before a scheduled violations office and shall endorse thereon "Court appearance required" and the defendant shall appear before the court either in person or by attorney.

89 Acts, ch 296, §92 SF 141  
Subsection 1 amended

## CHAPTER 808A

### STUDENT SEARCHES

#### 808A.1 Definitions.

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

1. "Student" means a person enrolled in a school for any of grades kindergarten through twelve.
2. "School" means a public or nonpublic educational institution offering any of grades kindergarten through twelve.
3. "School official" means a licensed school employee, and includes unlicensed school employees employed for security or supervision purposes.
4. "Protected student area" includes, but is not limited to:
  - a. A student's body.
  - b. Clothing worn or carried by a student.
  - c. A student's pocketbook, briefcase, duffel bag, bookbag, backpack, knapsack, or any other container used by a student for holding or carrying personal belongings of any kind and in the possession or immediate proximity of the student.
  - d. A school locker, desk, or other facility or space issued or assigned to, or chosen by, the student for the storage of personal belongings of any kind, which the student locks or is permitted to lock. School officials may conduct periodic inspections of all school lockers. However, the school district shall provide notice to the students, at least twenty-four hours prior to the inspection, of the date and time of the inspection.
5. "Student search rule" means a rule established by the school board of a public school, pursuant to section 279.8 or 279.9, or the authorities in charge of a nonpublic school controlling the manner of the searching of students or protected student areas. A student search rule, to be valid for purposes of this chapter, must be reasonable and shall be based upon relevant factors which include, but are not limited to, the following:
  - a. The seriousness of the violation for which a search may be instituted.
  - b. The age or ages of the students which may be searched pursuant to the rule.
  - c. The information or suspicion which must exist to warrant the institution of a search.

89 Acts, ch 265, §40 HF 794  
Section amended

## CHAPTER 808B

### INTERCEPTION OF COMMUNICATIONS

Chapter repealed effective July 1, 1994; §808B.9

#### 808B.1 Definitions.

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

1. "*Aggrieved person*" means a person who was a party to an intercepted wire communication or oral communication or a person against whom the interception was directed.

2. "*Contents*", when used with respect to a wire communication or oral communication, includes any information concerning the identity of the parties to the communication or the existence, substance, purpose, or meaning of that communication.

3. "*Court*" means a district court in this state.

4. "*Electronic, mechanical, or other device*" means a device or apparatus which can be used to intercept a wire communication or oral communication other than either of the following:

a. A telephone or telegraph instrument, equipment, or facility, or any component of it which is either of the following:

(1) Furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of the subscriber's or user's business.

(2) Being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of the officer's duties.

b. A hearing aid or similar device being used to correct subnormal hearing to not better than normal hearing.

5. "*Intercept*" or "*interception*" means the aural acquisition of the contents of a wire communication or oral communication through the use of an electronic, mechanical, or other device.

6. "*Investigative or law enforcement officer*" means a peace officer of this state or one of its political subdivisions or of the United States who is empowered by law to conduct investigations of or to make arrests for criminal offenses, the attorney general, or a county attorney authorized by law to prosecute or participate in the prosecution of criminal offenses.

7. "*Oral communication*" means an oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception, under circumstances justifying that expectation.

8. "*Special state agent*" means a sworn peace officer member of the department of public safety.

9. "*Wire communication*" means a communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, furnished or operated by a person engaged as a common carrier in providing or operating the facilities for the transmission of communications.

89 Acts, ch 225, §22 HF 780  
NEW section

### **808B.2 Unlawful acts—penalty.**

1. Except as otherwise specifically provided in this chapter, a person who does any of the following commits a class "D" felony:

a. Willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, a wire communication or oral communication.

b. Willfully uses, endeavors to use, or procures any other person to use or endeavor to use an electronic, mechanical, or other device to intercept any oral communication when either of the following applies:

(1) The device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication.

(2) The device transmits communications by radio, or interferes with the transmission of radio communications.

c. Willfully discloses, or endeavors to disclose, to any other person the contents of a wire communication or oral communication, knowing or having reason to

know that the information was obtained through the interception of a wire communication or oral communication in violation of this subsection.

d. Willfully uses, or endeavors to use, the contents of a wire communication or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire communication or oral communication in violation of this subsection.

2. a. It is not unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of a communications common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of employment while engaged in an activity which is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of the communication. However, communications common carriers shall not use service observing or random monitoring except for mechanical or service quality control checks.

b. It is not unlawful under this chapter for a person acting under color of law to intercept a wire communication or oral communication, if the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.

c. It is not unlawful under this chapter for a person not acting under color of law to intercept a wire communication or oral communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing a criminal or tortious act in violation of the Constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.

3. An operator of a switchboard, or an officer, employee, or agent of a communications common carrier, whose facilities are used in the transmission or interception of a wire or oral communication shall not disclose the existence of any transmission or interception or the device used to accomplish the transmission or interception with respect to a court order under this chapter, except as may otherwise be required by legal process or court order. Violation of this subsection is a class "D" felony.

89 Acts, ch 225, §23 HF 780  
NEW section

### **808B.3 Court order for interception by special agents.**

The attorney general shall authorize and prepare any application for an order authorizing the interception of wire communications or oral communications. The attorney general may apply to any district court of this state, or request that the county attorney in the district where application is to be made deliver the application of the attorney general, for an order authorizing the interception of wire communications or oral communications, and the court may grant, subject to this chapter, an order authorizing the interception of wire communications or oral communications by special state agents having responsibility for the investigation of the offense as to which application is made, when the interception may provide or has provided evidence of the commission of felony offenses involving dealing in controlled substances, as defined in section 204.101, subsection 6.

89 Acts, ch 225, §24 HF 780  
NEW section

### **808B.4 Permissible disclosure and use.**

1. A special state agent who, by any means authorized by this chapter, has obtained knowledge of the contents of a wire communication or oral communication, or has obtained evidence derived from a wire communication or oral communication, may disclose the contents to another investigative or law

enforcement officer to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

2. An investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of a wire communication or oral communication or has obtained evidence derived from a wire communication or oral communication may use the contents to the extent the use is appropriate to the proper performance of the officer's official duties.

3. A person who has received, by any means authorized by this chapter, any information concerning a wire communication or oral communication, or evidence derived from a wire communication or oral communication intercepted in accordance with this chapter may disclose the contents of that communication or derivative evidence while giving testimony under oath or affirmation in a criminal proceeding in any court of the United States or of this state or in any federal or state grand jury proceeding.

4. An otherwise privileged wire communication or oral communication intercepted in accordance with, or in violation of, the provisions of this chapter does not lose its privileged character.

5. If a special state agent, while engaged in intercepting a wire communication or oral communication in the manner authorized, intercepts a communication relating to an offense other than those specified in the order of authorization, the contents of the communication, and the evidence derived from the communication, may be disclosed or used as provided in subsections 1 and 2. The contents of and the evidence derived from the communication may be used under subsection 3 when authorized by a court if the court finds on subsequent petition that the contents were otherwise intercepted in accordance with this chapter. The petition shall be made as soon as practicable.

89 Acts, ch 225, §25 HF 780  
NEW section

### **808B.5 Application and order.**

1. An application for an order authorizing or approving the interception of a wire communication or oral communication shall be made in writing upon oath or affirmation to a court and shall state the applicant's authority to make the application. An application shall include the following information:

a. The identity of the special state agent requesting the application, the supervisory officer reviewing and approving the request, and the approval of the administrator of a division of the department of public safety under whose command the special state agent making the application is operating or the administrator's designee.

b. A full and complete statement of the facts and circumstances relied upon by the applicant to justify the belief that an order should be issued, including details as to the particular offense that has been, is being, or is about to be committed, a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, a particular description of the type of communications sought to be intercepted, and the identity of the person, if known, committing the offense and whose communications are to be intercepted.

c. A full and complete statement as to whether other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.

d. A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will subsequently occur.

e. A full and complete statement of the facts concerning all previous applications known to the individuals authorizing and making the application, made to any court for authorization to intercept, or for approval of interceptions of, wire communications or oral communications involving any of the same persons, facilities or places specified in the application, and the action taken by the court on those applications.

f. If the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain results.

2. The court may require the applicant to furnish additional testimony or documentary evidence in support of the application.

3. Upon application the court may enter an ex parte order, as requested or as modified, authorizing interception of wire communications or oral communications within the territorial jurisdiction of the court, if the court finds on the basis of the facts submitted by the applicant all of the following:

a. There is probable cause for belief that an individual is committing, has committed, or is about to commit a felony offense involving dealing in controlled substances, as defined in section 204.101, subsection 6.

b. There is probable cause for belief that particular communications concerning the offense will be obtained through the interception.

c. Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.

d. There is probable cause for belief that the facilities from which, or the place where, the wire communications or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person whose communications are to be intercepted.

4. Each order authorizing the interception of a wire communication or oral communication shall specify all of the following:

a. The identity of the person, if known, whose communications are to be intercepted.

b. The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted.

c. A particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which the communication relates.

d. The identity of the agency authorized to intercept the communications, and of the person requesting the application.

e. The period of time during which interception is authorized, including a statement as to whether the interception shall automatically terminate when the described communication has been first obtained.

5. Each order authorizing the interception of a wire communication or oral communication shall, upon request of the applicant, direct that a communications common carrier, landlord, custodian, or other person shall furnish to the applicant all information, facilities, and technical assistance necessary to accomplish the interception inconspicuously and with a minimum of interference with the services that the carrier, landlord, custodian, or person is giving to the person whose communications are to be intercepted. Any communications common carrier, landlord, custodian, or other person furnishing facilities or technical assistance shall be compensated by the applicant at the prevailing rates.

6. An order entered under this section shall not authorize the interception of a wire communication or oral communication for a period longer than is necessary to achieve the objective of the authorized interception, or in any event longer than thirty days. The thirty-day period shall commence on the date specified in the order upon which the commencement of the interception is authorized or ten days

after the order is entered, whichever is earlier. An extension of an order may be granted, but only upon application for an extension made in accordance with subsection 1 and the court making the findings required by subsection 3. The period of extension shall be no longer than the authorizing court deems necessary to achieve the purposes for which it was granted and in no event longer than thirty days. Every order and its extension shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this section and sections 808B.1 through 808B.4, 808B.6, and 808B.7, and shall terminate upon attainment of the authorized objective, or in any event in thirty days.

7. If an order authorizing interception is entered pursuant to this chapter, the order may require reports to be made to the court which issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. The reports shall be made at intervals as the court requires.

8. The contents of a wire communication or oral communication intercepted by a means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of a wire communication or oral communication under this subsection shall be done in a way which will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions of it, the recordings shall be made available to the court issuing the order and shall be sealed under the court's directions. Custody of the recordings shall be in accordance with the court order. Recordings shall be kept for five years and shall then be destroyed unless it is necessary to keep the recordings due to a continued legal process or court order, but the recordings shall not be kept for longer than ten years. Duplicate recordings may be made for disclosure or use pursuant to section 808B.4, subsections 1 and 2. The presence of a seal, or a satisfactory explanation for its absence, is a prerequisite for the disclosure or use of the contents of a wire communication or oral communication or evidence derived from a communication under section 808B.4, subsection 3.

Applications made and orders granted under this chapter shall be sealed by the court. Custody of the applications and orders shall be in accordance with the directives of the court. The applications and orders shall be disclosed only upon a showing of good cause before a court and shall be kept for five years and shall then be destroyed unless it is necessary to keep the applications or orders due to a continued legal process or court order, but the applications and orders shall not be kept for longer than ten years.

A violation of this subsection may be punished as contempt of court.

9. Within a reasonable time, but not longer than ninety days, after the termination of the period of an order or its extensions, the court shall cause a notice to be served on all persons named in the order or the application which includes the following:

a. The names of other parties to intercepted communications if the court determines disclosure of the names to be in the interest of justice.

b. An inventory which shall include all of the following:

- (1) The date of the application.
- (2) The date of the entry of the court order and the period of authorized, approved, or disapproved interception, or the denial of the application.
- (3) Whether, during the period, wire or oral communications were or were not intercepted.

The court, upon the filing of a motion by a person whose communications were intercepted, shall make available to the person or the person's attorney for inspection the intercepted communications, applications, and orders. On an ex

parte showing of good cause to a court, the service of the inventory required by this subsection may be postponed.

10. The contents of an intercepted wire communication or oral communication or evidence derived from the wire communication or oral communication shall not be received in evidence or otherwise disclosed in a trial, hearing, or other proceeding in a federal or state court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized. This ten-day period may be waived by the court if it finds that it was not possible to furnish the party with the above information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information. If the ten-day period is waived by the court, the court may grant a continuance, or enter such other order as it deems just under the circumstances.

11. An aggrieved person in a trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of this state, may move to suppress the contents of an intercepted wire communication or oral communication, or evidence derived from the wire communication or oral communication, on the grounds that the communication was unlawfully intercepted, the order of authorization under which it was intercepted was insufficient on its face, or the interception was not made in conformity with the order of authorization. The motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire communication or oral communication, or evidence derived from the wire communication or oral communication, shall be treated as having been obtained in violation of this chapter.

12. An appeal by the attorney general from an order granting a motion to suppress or from the denial of an application for an order of approval shall be pursuant to section 814.5, subsection 2.

89 Acts, ch 225, §26 HF 780  
NEW section

### **808B.6 Reports to state court administrator.**

1. Within thirty days after the denial of an application or after the expiration of an order granting an application, or after an extension of an order, the court shall report to the state court administrator all of the following:

- a. The fact that an order or extension was applied for.
- b. The kind of order or extension applied for.
- c. The fact that the order or extension was granted as applied for, was granted as modified, or that an application was denied.
- d. The period of interceptions authorized by the order, and the number and duration of any extensions of the order.
- e. The offense specified in the order or application, or extension of an order.
- f. The identity of the prosecutor making the application and the court reviewing and approving the request.
- g. The nature of the facilities from which or the place where communications were to be intercepted.

2. In January of each year, the attorney general and the county attorneys of this state shall report to the state court administrator and to the administrative offices of the United States district courts all of the following:

- a. The fact that an order or extension was applied for.
- b. The kind of order or extension applied for.
- c. The fact that the order or extension was granted as applied for, was granted as modified, or that an application was denied.

d. The period of interceptions authorized by the order, and the number and duration of any extensions of the order.

e. The offense specified in the order or application, or extension of an order.

f. The nature of the facilities from which or the place where communications were to be intercepted.

g. A general description of the interceptions made under such order or extension, including:

(1) The approximate nature and frequency of incriminating communications intercepted.

(2) The approximate nature and frequency of other communications intercepted.

(3) The approximate number of persons whose communications were intercepted.

(4) The approximate nature, amount, and cost of personnel and other resources used in the interceptions.

h. The number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made.

i. The number of trials resulting from such interceptions.

j. The number of motions to suppress made with respect to such interceptions, and the number granted or denied.

k. The number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions.

l. The information required by paragraphs "b" through "f" with respect to orders or extensions obtained in a preceding calendar year and not yet reported.

m. Other information required by the rules of the administrative offices of the United States district courts.

3. In March of each year the state court administrator shall transmit to the general assembly a full and complete report concerning the number of applications for orders authorizing the interception of wire communications or oral communications and the number of applications, orders, and extensions granted or denied during the preceding calendar year. The report shall include a summary and analysis of the data required to be filed with the state court administrator by the attorney general, county attorneys, and the courts.

89 Acts, ch 225, §27 HF 780  
NEW section

### 808B.7 Contents of intercepted wire or oral communication as evidence.

The contents or any part of the contents of an intercepted wire communication or oral communication and any evidence derived from the wire communication or oral communication shall not be received in evidence in a trial, hearing, or other proceeding in or before a court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a state, or political subdivision of a state if the disclosure of that information would be in violation of this chapter.

89 Acts, ch 225, §28 HF 780  
NEW section

### 808B.8 Civil damages authorized—civil and criminal immunity—injunctive relief.

1. A person whose wire communication or oral communication is intercepted, disclosed, or used in violation of this chapter shall:

a. Have a civil cause of action against any person who intercepts, discloses, or uses or procures any other person to intercept, disclose, or use such communications.

b. Be entitled to recover from any such person all of the following:

(1) Actual damages, but not less than liquidated damages computed at the rate of one hundred dollars a day for each day of violation, or one thousand dollars, whichever is higher.

(2) Punitive damages upon a finding of a willful, malicious, or reckless violation of this chapter.

(3) A reasonable attorney's fee and other litigation costs reasonably incurred.

2. A good faith reliance on a court order shall constitute a complete defense to any civil or criminal action brought under this chapter.

3. A person whose wire communication or oral communication is intercepted, disclosed, or used in violation of this chapter may seek an injunction, either temporary or permanent, against any person who violates this chapter.

89 Acts, ch 225, §29 HF 780  
NEW section

### **808B.9 Repeal.**

This chapter is repealed effective July 1, 1994.

89 Acts, ch 225, §30 HF 780  
NEW section

## **CHAPTER 811**

### **PRETRIAL RELEASE—BAIL**

#### **811.1 Bailable and nonbailable offenses.**

All defendants are bailable both before and after conviction, by sufficient surety, or subject to release upon condition or on their own recognizance, except that the following defendants shall not be admitted to bail:

1. A defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of a class "A" felony, murder, felonious assault, sexual abuse in the second degree, sexual abuse in the third degree, kidnapping, robbery in the first degree, arson in the first degree, or burglary in the first degree.

2. A defendant appealing a conviction of a class "A" felony, murder, felonious assault, sexual abuse in the second degree, sexual abuse in the third degree, kidnapping, robbery in the first degree, arson in the first degree, or burglary in the first degree.

89 Acts, ch 138, §4, 5 SF 426  
Subsections 1 and 2 amended

## **CHAPTER 901**

### **JUDGMENT AND SENTENCING PROCEDURES**

#### **901.2 Presentence investigation.**

Upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction of a public offense may be rendered, the court shall receive from the state, from the judicial district department of correctional services, and from the defendant any information which may be offered which is relevant to the question of sentencing. The court may consider information from other sources. Notwithstanding section 13.10, the court may determine if the defendant shall be required to provide a physical specimen to be submitted for DNA profiling if the defendant is to be placed on probation or work release. The court shall consider the deterrent effect of DNA profiling, the likelihood of repeated violations by the defendant, and the seriousness of the offense. When funds have been allocated from the general fund of the state, or funds are provided by other public or private

sources, the court shall order DNA profiling. The court shall order a presentence investigation when the offense is a class "B," class "C," or class "D" felony. A presentence investigation for a class "B," class "C," or class "D" felony shall not be waived. The court may order, with the consent of the defendant, that the presentence investigation begin prior to the acceptance of a plea of guilty, or prior to a verdict of guilty. The court may order a presentence investigation when the offense is an aggravated or serious misdemeanor.

The court may withhold execution of any judgment or sentence for such time as shall be reasonably necessary for an investigation with respect to deferment of judgment, deferment of sentence, or suspension of sentence and probation. The investigation shall be made by the judicial district department of correctional services.

The purpose of the report by the judicial district department of correctional services is to provide the court pertinent information for purposes of sentencing and to include suggestions for correctional planning for use by correctional authorities subsequent to sentencing.

89 Acts, ch 156, §2 SF 233  
Unnumbered paragraph 1 amended

#### **901.4 Presentence investigation report confidential.**

The presentence investigation report is confidential and the court shall provide safeguards to ensure its confidentiality, including but not limited to sealing the report, which may be opened only by further court order. At least three days prior to the date set for sentencing, the court shall serve all of the presentence investigation report upon the defendant's attorney and the attorney for the state, and the report shall remain confidential except upon court order. However, the court may conceal the identity of the person who provided confidential information. The report of a medical examination or psychological or psychiatric evaluation shall be made available to the attorney for the state and to the defendant upon request. The reports are part of the record but shall be sealed and opened only on order of the court. If the defendant is committed to the custody of the Iowa department of corrections and is not a class "A" felon, a copy of the presentence investigation report shall be forwarded to the director with the order of commitment by the clerk of the district court and to the board of parole at the time of commitment. The defendant or the defendant's attorney may file with the presentence investigation report, a denial or refutation of the allegations, or both, contained in the report. The denial or refutation shall be included in the report.

89 Acts, ch 279, §7 HF 700  
Section amended

## **CHAPTER 904A**

### **BOARD OF PAROLE**

#### **904A.1 Board of parole.**

The board of parole is created to consist of five members. Each member, except the chairperson, shall be compensated on a day-to-day basis. Each member shall serve a term of four years beginning July 1, except for members appointed to fill vacancies who shall serve for the balance of the unexpired term. The terms shall be staggered. The chairperson of the board shall be a full-time, salaried member of the board. A majority of the members of the board constitutes a quorum to transact business.

89 Acts, ch 282, §1 SF 519  
Transition provisions; 89 Acts, ch 282, §14, 16 SF 519  
Section amended

**904A.3 Appointment to board of parole.**

The governor shall appoint the chairperson and other members of the board of parole, subject to confirmation by the senate. The chairperson shall serve at the pleasure of the governor. Vacancies shall be filled in the same manner as regular appointments are made.

89 Acts, ch 282, §2 SF 519  
Section amended

**904A.4 Duties of the board of parole.**

1. The board of parole shall interview and consider inmates for parole and work release and a majority vote of the members is required to grant a parole or work release.

2. The board of parole shall interview inmates according to administrative rules adopted by the board.

3. The board of parole shall gather and review information regarding new parole and work release programs being instituted or considered nationwide and determine which programs may be useful for this state. The board shall review the current parole and work release programs and procedures used in this state on an annual basis.

4. The board of parole shall increase utilization of data processing and computerization to assist in the orderly conduct of the parole and work release system.

5. The board of parole shall conduct such studies of the parole and work release system as are requested by the governor and the general assembly.

6. The board of parole shall provide technical assistance and counseling related to the board's purposes to public and private entities.

7. The board of parole shall review and make recommendations to the governor regarding all applications for reprieves, pardons, commutation of sentences, remission of fines or forfeitures, or restoration of citizenship rights as required by chapter 248A.

8. The board of parole shall implement a risk assessment program which shall provide risk assessment analysis for the board.

89 Acts, ch 282, §3 SF 519  
Section stricken and rewritten

**904A.4A Chairperson of the board of parole—duties.**

The chairperson of the board of parole shall do all of the following:

1. Act as the board's liaison with the governor regarding executive clemency, parole, and work release matters.

2. Direct, supervise, evaluate, and assign the day-to-day administration of the board of parole.

3. Supervise and monitor parole revocations and appeals.

4. Supervise final work release revocation case reviews.

5. Supervise the development of rules, policies, and procedures, subject to the approval of the board, in cooperation with the department of corrections, pertaining to the supervision of executive clemency, parole, and work release.

6. Supervise the development of long-range parole and work release planning.

89 Acts, ch 282, §4 SF 519  
NEW section

**904A.4B Executive director of the board of parole—duties.**

The chief administrative officer of the board of parole shall be the executive director. The executive director shall be appointed by the chairperson, subject to the approval of the board and shall serve at the pleasure of the board. The executive director shall do all of the following:

1. Advise the board on matters relating to parole, work release, and executive clemency, and advise the board on matters involving automation and word processing.
2. Carry out all directives of the board.
3. Hire and supervise all of the board's staff pursuant to the provisions of chapter 19A.
4. Act as the board's liaison with the general assembly.
5. Prepare a budget for the board, subject to the approval of the board, and prepare all other reports required by law.
6. Develop long-range parole and work release planning, in cooperation with the department of corrections.

89 Acts, ch 282, §5 SF 519  
NEW section

#### **904A.5 Administration of board of parole.**

The chairperson of the board of parole is responsible directly to the governor. The board of parole is attached to the department of corrections for routine administrative and support services only.

89 Acts, ch 282, §6 SF 519  
Section amended

#### **904A.6 Salaries and expenses.**

Each member, except the chairperson, of the board shall be paid per diem as determined by the general assembly. The chairperson of the board shall be paid a salary as determined by the general assembly. Each member of the board and all employees are entitled to receive, in addition to their per diem or salary, their necessary maintenance and travel expenses while engaged in official business.

89 Acts, ch 282, §7 SF 519  
Section amended

**904A.7 Risk assessment program.** Repealed by 89 Acts, ch 282, §15. SF 519

## CHAPTER 905

### COMMUNITY-BASED CORRECTIONAL PROGRAM

#### **905.13 Compliance with building codes.**

The department of corrections and the district departments of correctional services shall comply with local building regulations and zoning ordinances in the construction, reconstruction, alteration, conversion, repair, and use of buildings owned and operated by the department as part of a community-based correctional program.

89 Acts, ch 316, §20 HF 772  
NEW section

## CHAPTER 906

### PAROLES AND WORK RELEASE

#### **906.4 Standards for release on parole or work release.**

A parole or work release shall be ordered only for the best interest of society and the offender, not as an award of clemency. The board shall release on parole or work release any person whom it has the power to so release, when in its opinion there is reasonable probability that the person can be released without detriment to the community or to the person. A person's release is not a detriment to the community or the person if the person is able and willing to fulfill the obligations of a law-abiding citizen, in the board's determination.

Notwithstanding section 13.10, the board may determine if the defendant shall be required to provide a physical specimen to be submitted for DNA profiling as a condition of parole or work release. The board shall consider the deterrent effect of DNA profiling, the likelihood of repeated violations by the offender, and the seriousness of the offense. When funds have been allocated from the general fund of the state, or funds have been provided by other public or private sources, the board shall order DNA profiling if appropriate.

89 Acts, ch 156, §3 SF 233  
NEW unnumbered paragraph 2

### **906.5 Record reviewed—rules.**

1. Within one year after the commitment of a person other than a class "A" felon, class "B" felon convicted of murder in the second degree and serving a sentence of more than twenty-five years, or a felon serving a mandatory minimum sentence, 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. However, if the registration of a victim prohibits conducting a timely interview as provided in this subsection, the interview may be conducted within a reasonable period of time after the one-year period or interval has expired in order to provide the victim notice as provided in section 910A.10, subsection 1, paragraph "a".

Not less than twenty days prior to conducting a hearing at which the board will interview the person, the board shall notify the department of corrections of the scheduling of the interview, and the department shall make the person available to the board at the person's institutional residence as scheduled in the notice. However, if health, safety, or security conditions require moving the person to another institution or facility prior to the scheduled interview, the department of corrections shall so notify the board.

2. At the time of an interview required under this section, the board shall consider all pertinent information regarding the person, including the circumstances of the person's offense, any presentence report which is available, the previous social history and criminal record of the person, the person's conduct, work, and attitude in prison, and the reports of physical and mental examinations that have been made.

3. 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.

89 Acts, ch 282, §8 SF 519  
Section amended

## **CHAPTER 907**

### **DEFERRED JUDGMENT, DEFERRED SENTENCE, SUSPENDED SENTENCE AND PROBATION**

#### **907.3 Deferred judgment, deferred sentence or suspended sentence.**

Pursuant to section 901.5, the trial court may, upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, exercise any of the options contained in this section. However, this section does not apply to a forcible felony.

1. With the consent of the defendant, the court may defer judgment and place the defendant on probation upon such conditions as it may require. Upon a showing that the defendant is not co-operating with the program of probation or is not responding to it, the court may withdraw the defendant from the program, pronounce judgment, and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon fulfillment of the conditions of probation, the defendant shall be discharged without entry of judgment. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

However, this subsection shall not apply if any of the following is true:

a. The offense is a violation of section 709.8 and the child is twelve years of age or under.

b. The defendant previously has been convicted of a felony. "Felony" means a conviction in a court of this or any other state or of the United States, of an offense classified as a felony by the law under which the defendant was convicted at the time of the defendant's conviction.

c. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief, two or more times anywhere in the United States.

d. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief in a felony prosecution anywhere in the United States within the preceding five years, measured from the date of granting of deferment of judgment to the date of commission of the offense.

e. The defendant committed an assault as defined in section 708.1, against a peace officer in the performance of the peace officer's duty.

f. The defendant is a corporation.

g. The offense is a violation of section 321J.2 and, within the previous six years, the person has been convicted of a violation of that section or the person's driver's license has been revoked pursuant to section 321J.4, 321J.9, or 321J.12.

2. At the time of or after pronouncing judgment and with the consent of the defendant, the court may defer the sentence and assign the defendant to the judicial district department of correctional services. Upon a showing that the defendant is not fulfilling the conditions of probation, the court may revoke probation and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

3. By record entry at the time of or after sentencing, the court may suspend the sentence and place the defendant on probation upon such terms and conditions as it may require including commitment to an alternate jail facility or a community correctional residential treatment facility for a specific number of days to be followed by a term of probation as specified in section 907.7. A person so committed who has probation revoked shall be given credit for such time served.

89 Acts, ch 296, §93 SF 141  
Unnumbered paragraph 1 amended

## CHAPTER 908

### VIOLETIONS OF PAROLE OR PROBATION

#### 908.4 Parole revocation hearing.

The parole revocation hearing shall be conducted by an administrative parole judge who is an attorney. The revocation hearing shall determine the following:

1. Whether the alleged parole violation occurred.

## 2. Whether the violator's parole should be revoked.

The administrative parole judge shall make a verbatim record of the proceedings. The alleged violator shall be informed of the evidence against the violator, shall be given an opportunity to be heard, shall have the right to present witnesses and other evidence, and shall have the right to cross-examine adverse witnesses, except if the judge finds that a witness would be subjected to risk or harm if the witness' identity were disclosed. The revocation hearing may be conducted electronically.

89 Acts, ch 282, §9 SF 519  
Section amended

### 908.5 Disposition.

If a violation of parole is established, the administrative parole judge may continue the parole with or without any modification of the conditions of parole. The administrative parole judge may revoke the parole and require the parolee to serve the sentence originally imposed, or may revoke the parole and reinstate the parolee's work release status. The order of the administrative parole judge shall contain findings of fact, conclusions of law, and a disposition of the matter.

89 Acts, ch 282, §10 SF 519  
Section stricken and rewritten

### 908.6 Appeal or review.

The order of the administrative parole judge shall become the final decision of the board of parole unless, within the time provided by rule, the parole violator appeals the decision or a panel of the board reviews the decision on its own motion. On appeal or review of the administrative parole judge's decision, the board panel has all the power which it would have in initially making the revocation hearing decision. The appeal or review shall be conducted pursuant to rules adopted by the board of parole. The record on appeal or review shall be the record made at the parole revocation hearing conducted by the administrative parole judge.

89 Acts, ch 282, §11 SF 519  
Section amended

### 908.7 Waiver of parole revocation hearing.

The alleged parole violator may waive the parole revocation hearing, in which event the administrative parole judge shall proceed to determine the disposition of the matter. The administrative parole judge shall dispose of the case as provided in section 908.4. The administrative parole judge shall make a verbatim record of the proceedings. The waiver proceeding may be conducted electronically.

89 Acts, ch 282, §12 SF 519  
Section amended

### 908.10 Conviction of a felony while on parole.

When a person is convicted and sentenced to incarceration in this state for a felony committed while on parole, or is convicted and sentenced to incarceration under the laws of any other state of the United States or a foreign government or country for an offense committed while on parole, and which if committed in this state would be a felony, the person's parole shall be deemed revoked as of the date of the commission of the new felony offense.

The parole officer shall inform the sentencing judge that the convicted defendant is a parole violator. The term for which the defendant shall be imprisoned as a parole violator shall be the same as that provided in cases of revocation of parole for violation of the conditions of parole. The new sentence of imprisonment for conviction of a felony shall be served consecutively with the term imposed for the parole violation, unless a concurrent term of imprisonment is ordered by the court.

The parolee shall be notified in writing that parole has been revoked on the basis of the new felony conviction, and a copy of the commitment order shall

accompany the notification. The inmate's record shall be reviewed pursuant to the provisions of section 906.5, or as soon as practical after a final reversal of the new felony conviction.

An inmate may appeal the revocation of parole under this section according to the board of parole's rules relating to parole revocation appeals. Neither the administrative parole judge nor the board panel shall retry the facts underlying any conviction.

89 Acts, ch 282, §13 SF 519  
Section stricken and rewritten

## CHAPTER 910

### VICTIM RESTITUTION

#### 910.4 Condition of probation—payment plan.

When restitution is ordered by the sentencing court and the offender is placed on probation, restitution shall be a condition of probation. Failure of the offender to comply with the plan of restitution, plan of payment, or community service requirements when community service is ordered by the court as restitution, shall constitute a violation of probation and shall constitute contempt of court. The court may hold the offender in contempt, revoke probation, or extend the period of probation, or upon notice of such noncompliance and hearing thereon, the court may enter a civil judgment against the offender for the outstanding balance of payments under the plan of restitution and such judgment shall be governed by the law relating to judgments, judgment liens, executions, and other process available to creditors for the collection of debts. However, if the period of probation is extended it shall not be for more than the maximum period of probation for the offense committed as provided in section 907.7.

If an offender's probation is revoked, the offender's assigned probation officer shall forward to the director of the Iowa department of corrections, information concerning the offender's restitution plan, restitution plan of payment, the restitution payment balance, and any other pertinent information concerning or affecting restitution by the offender.

When the offender is committed to a county jail, or to an alternate facility, the office or individual charged with supervision of the offender shall prepare a restitution plan of payment taking into consideration the offender's income, physical and mental health, age, education, employment and family circumstances. The office or individual charged with supervision of the offender shall review the plan of restitution ordered by the court, and shall submit a restitution plan of payment to the sentencing court. When community service is ordered by the court as restitution, the restitution plan of payment shall set out a plan to meet the requirement for the community service. The court may approve or modify the plan of restitution and restitution plan of payment. When there is a significant change in the offender's income or circumstances, the office or individual which has supervision of the plan of payment shall submit a modified restitution plan of payment to the court. When there is a transfer of supervision from one office or individual charged with supervision of the offender to another, the sending office or individual shall forward to the receiving office or individual all necessary information regarding the balance owed against the original amount of restitution ordered and the balance of public service required. When the offender's circumstances and income have significantly changed, the receiving office or individual shall submit a new plan of payment to the sentencing court for approval or modification based on the considerations enumerated in this section.

## CHAPTER 910A

### VICTIM AND WITNESS PROTECTION ACT

#### 910A.1 Title—definitions.

This chapter shall be known and may be cited as the “Victim and Witness Protection Act.”

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

1. “*Victim*” means a person who has suffered physical, emotional, or financial harm as the result of a public offense, other than a simple misdemeanor, committed in this state. The term also includes the immediate family members of a victim who died or was rendered incompetent as a result of the offense or who was under eighteen years of age at the time of the offense.
2. “*Violent crime*” means a forcible felony, as defined in section 702.11, and includes any other felony or aggravated misdemeanor which involved the actual or threatened infliction of physical or emotional injury on one or more persons.
3. “*Registered*” means having provided the county attorney with the victim’s written request for registration and current mailing address and telephone number.
4. “*Notification*” means mailing by regular mail or providing for hand delivery of appropriate information or papers. However, this notification procedure does not prohibit an agency from also providing appropriate information to a registered victim by telephone.

89 Acts, ch 279, §8 HF 700  
Subsection 3 amended

#### 910A.2 Registration.

The county attorney shall be the sole registrar of victims under this chapter. A victim may register by filing a written request-for-registration form with the county attorney. The county attorney shall notify the victims in writing and advise them of their registration and rights under this chapter. The county attorney shall provide the appropriate offices, agencies, and departments with a registered victim list for notification purposes.

89 Acts, ch 279, §9 HF 700  
Section 910A.2 in Code Supplement 1985 transferred to §910A.13 in Code 1987; 86 Acts, ch 1178, §19.  
NEW section

**910A.3 and 910A.4** Transferred in Code 1987 to §910A.14 and 910A.15. See 86 Acts, ch 1178, §19.

#### 910A.5 Victim impact statement.

A victim may file a signed victim impact statement with the county attorney, and a filed impact statement shall be included in the presentence investigation report. If a presentence investigation report is not ordered by the court, a filed victim impact statement shall be provided to the court prior to sentencing.

The court shall consider a filed victim impact statement in determining the appropriate sentence and in entering any order of restitution to the victim pursuant to chapter 910.

The victim impact statement shall:

1. Identify the victim of the offense.
2. Itemize any economic loss suffered by the victim as a result of the offense. For purposes of this paragraph, a pecuniary damages statement prepared by a county attorney pursuant to section 910.3, may serve as the itemization of economic loss.
3. Identify any physical injury suffered by the victim as a result of the offense with detail as to its seriousness and permanence.

4. Describe any change in the victim's personal welfare or familial relationships as a result of the offense.

5. Describe any request for psychological services initiated by the victim or the victim's family as a result of the offense.

6. Contain any other information related to the impact of the offense upon the victim.

89 Acts, ch 279, §10 HF 700

Transferred from §910A.5A in 1989 Code to §910A.5 in 1989 Code Supplement

Unnumbered paragraph 1 amended

**910A.5A** Victim impact statement. Transferred in Code Supplement 1989 to §910A.5.

**910A.6 Notification by county attorney.**

The county attorney shall notify a victim registered with the county attorney's office of the following:

1. The cancellation or postponement of a court proceeding that was expected to require the victim's attendance.

2. The possibility of assistance through the crime victim reparations program, pursuant to chapter 912, and the procedures for applying for that assistance.

3. The right, pursuant to chapter 910, to restitution for pecuniary losses suffered as a result of crime.

4. The victim's right to make a written impact statement.

89 Acts, ch 279, §11 HF 700

Subsection 5 stricken

**910A.7 Notification by clerk of the district court.**

The clerk of court shall notify a registered victim of all dispositional orders of the case in which the victim was involved and may advise the victim of any other orders regarding custody or confinement.

89 Acts, ch 279, §12 HF 700

Section amended

**910A.7A Notification by clerk of the supreme court.**

The clerk of the supreme court shall notify a registered victim of all dispositional orders of a case currently on appeal in which the victim was involved.

89 Acts, ch 279, §13 HF 700

NEW section

**910A.8 Notification by law enforcement.**

The local police department or county sheriff's department shall advise a victim of the right to register with the county attorney, and shall provide a request-for-registration form to each victim. The county sheriff or other person in charge of the local jail or detention facility shall notify a registered victim of the following:

1. The offender's release from custody on bail and the terms or conditions of the release.

2. The offender's final release from local custody.

3. The offender's escape from custody.

89 Acts, ch 279, §14 HF 700

Unnumbered paragraph 1 amended

**910A.9 Notification by department of corrections.**

The department of corrections shall notify a registered victim, regarding an offender convicted of a violent crime and committed to the custody of the director of the department of corrections, of the following:

1. The date on which the offender is expected to be released from custody on work release, and whether the offender is expected to return to the community where the registered victim resides.

2. The date on which the offender is expected to be temporarily released from custody on furlough, and whether the offender is expected to return to the community where the registered victim resides.

3. The offender's escape from custody.

4. The recommendation by the department of the offender for parole consideration.

5. The date on which the offender is expected to be released from an institution or facility pursuant to a plan of parole or work release, or upon discharge of sentence.

89 Acts, ch 279, §15, 16 HF 700  
Unnumbered paragraph 1 amended  
NEW subsection 5

### **910A.10 Notification by board of parole.**

1. The board of parole shall notify a registered victim, regarding an offender who has committed a violent crime, as follows:

a. Not less than twenty days prior to conducting a hearing at which the board will interview an offender, the board shall notify the victim of the interview and inform the victim that the victim may submit the victim's opinion concerning the release of the offender in writing prior to the hearing or may appear personally or by counsel at the hearing to express an opinion concerning the offender's release.

b. Whether or not the victim appears at the hearing or expresses an opinion concerning the offender's release on parole, the board shall notify the victim of the board's decision regarding release of the offender.

2. Offenders who are being considered for release on parole may be informed of a victim's registration with the county attorney and the substance of any opinion submitted by the victim regarding the release of the offender.

89 Acts, ch 279, §17, 18 HF 700  
Subsection 1, unnumbered paragraph 1 and paragraph a amended  
Subsection 2 amended

### **910A.14 Recorded evidence—court testimony.**

1. A court may, upon its own motion or upon motion of any party, order that the testimony of a child, as defined in section 702.5, be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court. Only the judge, parties, counsel, persons necessary to operate the equipment, and any person whose presence, in the opinion of the court, would contribute to the welfare and well-being of the child may be present in the room with the child during the child's testimony.

2. The court may, upon its own motion or upon motion of a party, order that the testimony of a child, as defined in section 702.5, be taken by recorded deposition for use at trial, pursuant to rule of criminal procedure 12(2)(b). In addition to requiring that such testimony be recorded by stenographic means, the court may on motion and hearing, and upon a finding that the child is unavailable as provided in Iowa rules of evidence 804(a), order the videotaping of the child's testimony for viewing in the courtroom by the court. The videotaping shall comply with the provisions of rule of criminal procedure 12(2)(b), and shall be admissible as evidence in the trial of the cause.

3. The court may upon motion of a party admit into evidence the recorded statements of a child, as defined in section 702.5, describing sexual contact performed with or on the child, not otherwise admissible in evidence by statute or court rule if the court determines that the recorded statements substantially comport with the requirements for admission under Iowa rules of evidence 803(24) or 804(5).

4. A court may, upon its own motion or upon the motion of a party, order the court testimony of a child to be limited in duration in accordance with the developmental maturity of the child. The court may consider or hear expert

testimony in order to determine the appropriate limitation on the duration of a child's testimony. However, the court shall, upon motion, limit the duration of a child's uninterrupted testimony to one hour, at which time the court shall allow the child to rest before continuing to testify.

89 Acts, ch 230, §23, 24 HF 690  
 Subsection 1, unnumbered paragraph 2 stricken  
 Subsection 2 amended

## CHAPTER 912

### CRIME VICTIM REPARATION PROGRAM

#### 912.1 Definitions.

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

1. *"Department"* means the department of justice.
2. *"Victim"* means a person who suffers personal injury or death as a result of any of the following:
  - a. A crime.
  - b. The good faith effort of a person attempting to prevent a crime.
  - c. The good faith effort of a person to apprehend a person suspected of committing a crime.
3. *"Crime"* means conduct that occurs or is attempted in this state, poses a substantial threat of personal injury or death, and is punishable as a felony, an aggravated misdemeanor, or a serious misdemeanor, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this state. *"Crime"* does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, motorcycle, motorized bicycle, train, boat, or aircraft except for violations of section 321J.2 or when the intention is to cause personal injury or death. A plea or verdict of guilty of a charge under section 321J.2 or a license revocation under section 321J.9 or 321J.12 shall be considered by the department as evidence of a violation of section 321J.2 for the purposes of this chapter.
4. *"Dependent"* means a person wholly or partially dependent upon a victim for care or support and includes a child of the victim born after the victim's death.
5. *"Reparation"* means compensation awarded by the department as authorized by this chapter.

89 Acts, ch 279, §19, 20 HF 700  
 Subsections 1 and 5 amended  
 Subsection 2 stricken and former subsections 3-6 renumbered as 2-5

#### 912.2 Award of reparation.

The department shall award reparations authorized by this chapter if the department is satisfied that the requirements for reparation have been met.

Word "commissioner" changed to "department"

#### 912.2A Crime victim assistance board.

1. A crime victim assistance board is established, and shall consist of the following members to be appointed pursuant to rules adopted by the department:
  - a. A county attorney or assistant county attorney.
  - b. A person engaged full time in law enforcement.
  - c. A public defender or an attorney practicing primarily in criminal defense.
  - d. A hospital medical staff person involved with emergency services.
  - e. A public member who has received victim services.
  - f. A victim service provider.
  - g. A person licensed pursuant to chapter 154B or 154C.

Board members shall be reimbursed for expenses actually and necessarily incurred in the discharge of their duties.

2. The board shall adopt rules pursuant to chapter 17A relating to program policies and procedures.

3. A victim aggrieved by the denial or disposition of the victim's claim may appeal to the district court within thirty days of receipt of the board's decision.

89 Acts, ch 279, §21 HF 700  
NEW section

### **912.3 Duties of department.**

The department shall:

1. Adopt rules pursuant to chapter 17A relating to the administration of the crime victim reparation program, including the filing of claims pursuant to the program, and the hearing and disposition of the claims.

2. Hear claims, determine the results relating to claims, and reinvestigate and reopen cases as necessary.

3. Publicize through the department, county sheriff departments, municipal police departments, county attorney offices, and other public or private agencies, the existence of the crime victim reparation program, including the procedures for obtaining reparation under the program.

4. Request from the department of human services, the divisions of job service and industrial services of the department of employment services, the attorney general, the county sheriff departments, the municipal police departments, the county attorneys, or other public authorities or agencies reasonable assistance or data necessary to administer the crime victim reparation program.

5. Require medical examinations of victims as needed. The victim shall be responsible for the cost of the medical examination if reparation is made. The department shall be responsible for the cost of the medical examination from funds appropriated to the department for the crime victim reparation program if reparation is not made to the victim unless the cost of the examination is payable as a benefit under an insurance policy or subscriber contract covering the victim or the cost is payable by a health maintenance organization.

6. Receive moneys collected pursuant to section 246.702 for the purpose of compliance with Pub. L. 98-473.

7. Render to the governor and the general assembly by January 1, 1984, a written report of activities undertaken for the crime victim reparation program.

Word "commissioner" changed to "department"

### **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 department and file the application with the department 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 department 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 seventy-two hours of its occurrence. If the crime cannot reasonably be reported within that time period, the crime shall have been reported within seventy-two hours of the time a report can reasonably be made.

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 7, and was reported to an employee of the department of human services and the employee verifies the report to the department.

4. When immediate or short-term medical services or mental health services are provided to a victim under section 910A.16, the department of human services shall file the claim for reparation as provided in subsection 3 for the victim.

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. The requirement to report the crime to the local police department or county sheriff department under subsection 2 does not apply to this subsection.

89 Acts, ch 279, §22 HF 700  
Subsections 2, 4 and 5 amended

### 912.5 Reparations payable.

The department may order the payment of reparation:

1. To or for the benefit of the person filing the claim.
2. To a person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of personal injury to the victim.
3. To or for the benefit of one or more dependents of the victim, in the case of death of the victim. If two or more dependents are entitled to a reparation, the reparation may be apportioned by the department as the department determines to be fair and equitable among the dependents.

Word "commissioner" changed to "department"

### 912.6 Computation of reparation.

The department shall make reparation, as appropriate, for any of the following economic losses incurred as a direct result of an injury to or death of the victim:

1. Reasonable charges incurred for medical care not to exceed ten thousand dollars.
2. Reasonable charges incurred for counseling provided to victims of domestic abuse, as defined in section 236.2, to victims of sexual assault, or to victims under eighteen years of age by a psychologist licensed under chapter 154B or by an individual holding at least a master's degree in social work or counseling and guidance, not to exceed five hundred dollars.
3. Reasonable charges incurred for victim counseling provided by a psychologist licensed under chapter 154B, a victim counselor as defined in section 236A.1, subsection 1, or an individual holding at least a master's degree in social work or counseling and guidance, not to exceed five hundred dollars.
4. Loss of income from work the victim would have performed and for which the victim would have received compensation if the victim had not been injured not to exceed two thousand dollars.
5. Reasonable replacement value of clothing that is held for evidentiary purposes not to exceed one hundred dollars.
6. Reasonable funeral and burial expenses not to exceed two thousand five hundred dollars.
7. Loss of support for dependents resulting from death or a period of disability of the victim of sixty days or more not to exceed two thousand dollars per dependent or a total of six thousand dollars.
8. In the event of a victim's death, reasonable charges incurred for counseling the victim's spouse, children, parents, siblings, or persons cohabiting with or related by blood or affinity to the victim if the counseling services are provided by a psychologist licensed under chapter 154B, a victim counselor as defined in section 236A.1, subsection 1, or an individual holding at least a master's degree in social work or counseling and guidance, and reasonable charges incurred by

such persons for medical care counseling provided by a psychiatrist licensed under chapter 147 or 150A. The allowable charges under this subsection shall not exceed five hundred dollars per person or a total of two thousand dollars per victim death.

89 Acts, ch 279, ch 23, 24 HF 700  
 Subsection 3 amended  
 NEW subsection 8

### 912.7 Reductions and disqualifications.

Reparations are subject to reduction and disqualification as follows:

1. A reparation shall be reduced by the amount of any payment received, or to be received, as a result of the injury or death:
  - a. From or on behalf of, a person who committed the crime or who is otherwise responsible for damages resulting from the crime.
  - b. From an insurance payment or program, including but not limited to workers' compensation or unemployment compensation.
  - c. From public funds.
  - d. As an emergency award under section 912.11.
2. A reparation shall not be made when the bodily injury or death for which a benefit is sought was caused by any of the following:
  - a. Consent, provocation, or incitement by the victim.
  - b. The victim assisting, attempting, or committing a criminal act.

89 Acts, ch 279, §25-27 HF 700  
 Subsection 1, paragraph a amended  
 Subsection 2, paragraphs b and c stricken and existing paragraph d relettered as b  
 Subsections 3 and 4 stricken

### 912.9 Erroneous or fraudulent payment—penalty.

1. If a payment or overpayment of a reparation is made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient, or other circumstances of a similar nature, not induced by fraud by or on behalf of the recipient, the recipient is liable for repayment of the reparation. The department may waive, decrease, or adjust the amount of the repayment of the reparation. However, if the department does not notify the recipient of the erroneous payment or overpayment within one year of the date the reparation was made, the recipient is not liable for the repayment of the reparation.
2. If a payment or overpayment has been induced by fraud by or on behalf of a recipient, the recipient is liable for repayment of the reparation.

Word "commissioner" changed to "department"

### 912.10 Release of information.

A person in possession or control of investigative or other information pertaining to an alleged crime or a victim filing for a reparation shall allow the inspection and reproduction of the information by the department upon the request of the department, to be used only in the administration and enforcement of the crime victim reparation program. Information and records which are confidential under section 22.7 and information or records received from the confidential information or records remain confidential under this section.

A person does not incur legal liability by reason of releasing information to the department as required under this section.

Word "commissioner" changed to "department"

### 912.11 Emergency payment reparation.

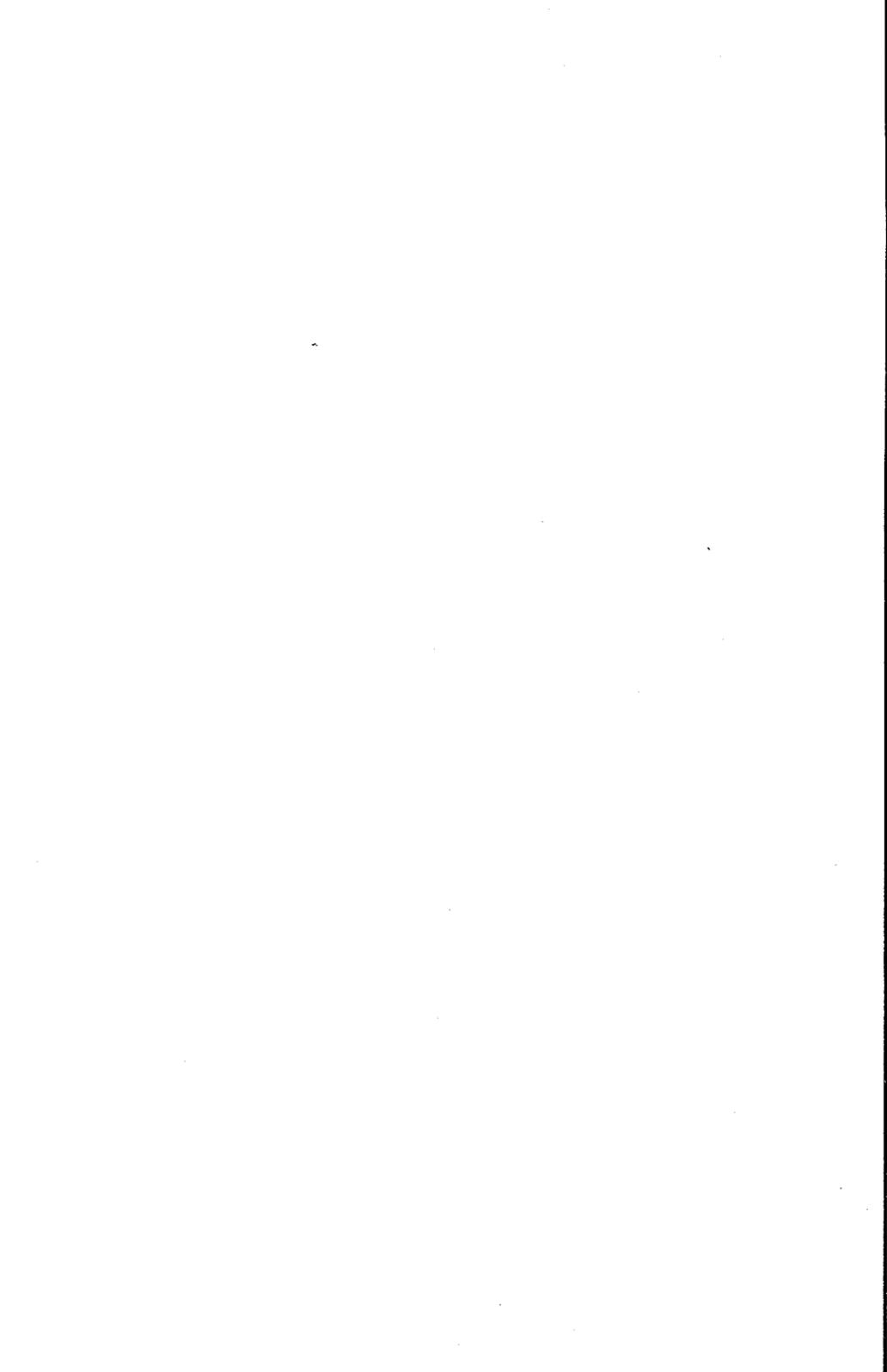
If the department determines that reparation may be made and that undue hardship may result to the person if partial immediate payment is not made, the department may order an emergency reparation to be made to the person, not to exceed five hundred dollars.

Word "commissioner" changed to "department"

**912.12 Right of action against perpetrator—subrogation.**

A right of legal action by the victim against a person who has committed a crime is not lost as a consequence of a person receiving reparation under the crime victim reparation program. If a person receiving reparation under the program seeks indemnification which would reduce the reparation under section 912.7, subsection 1, the department is subrogated to the recovery to the extent of payments by the department to or on behalf of the person. The department has a right of legal action against a person who has committed a crime resulting in payment of reparation by the department to the extent of the reparation payment. However, legal action by the department does not affect the right of a person to seek further relief in other legal actions.

Word "commissioner" changed to "department"



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# CODE EDITOR'S NOTES

## Code Section

- 22.7** The 1989 amendments do not appear to conflict, so they were harmonized to give effect to each, as required by Code section 4.11. In some cases where this note is referred to, the amendments were actually identical. If amendments were to different distinct parts of a section, a Code editor's note was not considered necessary. Also, a Code editor's note was generally not written for cases where a strike or repeal prevailed over an amendment to the same material.
- 203B.3** Although 1989 Acts, chapter 197, sections 3 and 6, refer to section 203B.13, that section was struck from the bill by amendment, so the reference was omitted in codification.
- 220.151** Although 1989 Acts, chapter 131, section 12, included an unnumbered paragraph 2 as part of new section 220.151, it appears that the substance of that unnumbered paragraph is more appropriately placed in new section 424.1 as subsection 5, and it was so codified.
- 232.71** The new subsection added by 1989 Acts, chapter 230, section 13, is identical to the new subsection added by 1989 Acts, chapter 283, section 22, so the subsection has been codified only once, as subsection 17.
- 256.7** Amendment to unnumbered paragraph 2 of subsection 3 by 1989 Acts, chapter 210, section 1, was superseded by a later-approved amendment in 1989 Acts, chapter 265, section 19, which struck and rewrote the subsection.
- 260.13** Although 1989 Acts, chapter 265, section 13, enacted this material as an amendment striking and rewriting section 260.12, the same Act repealed section 260.12. It appears that the intent was to insert this as new material in chapter 260, so it was codified as section 260.13.
- 261.39  
and  
261.40** Although 1989 Acts, chapter 300, section 26, directed that the words "loan payment" be substituted for the words "student loan" in these sections, the directive was not carried out where the reference was to a section or program of an earlier year when "student loan program" was the correct designation.
- 261.54** The amendments to unnumbered paragraph 2 in 1989 Acts, chapter 300, section 17, and 1989 Acts, chapter 319, section 49, could not be fully harmonized. They were enacted (signed by the governor) on the same day. However, 1989 Acts, chapter 319, was passed by the general assembly a day later than 1989 Acts, chapter 300. It also appears that 1989 Acts, chapter 319, section 49, is more specific as to the subject matter of the science and mathematics loan program, as chapter 319 dealt with that program more completely by repealing the other sections relating to the program (sections 261.51 through 261.53), and by amending section 261.54 more extensively; therefore, the amendments to unnumbered paragraph 2 in 1989 Acts, chapter 319, section 49, were codified.
- 261.81** The substance of the amendments in 1989 Acts, chapter 300, section 18, and 1989 Acts, chapter 319, section 50, was harmonized as required by Code section 4.11. Where there were technical conflicts, the later enactment, 1989 Acts, chapter 319, section 50, was codified.
- 307B.23** 1989 Acts, chapter 4, section 2, and 1989 Acts, chapter 6, section 1, each struck one of the two Code section references in subsection 1, unnumbered paragraph 1, leaving a meaningless part of a sentence which could not be editorially corrected by simple harmonizing. Corrective legislation is pending.

# CODE EDITOR'S NOTES

## Code Section

- 321.34** Although the amendments to subsection 7 are phrased differently as to the type of physician authorized to issue a statement of an applicant's handicap, the substance of the amendments is not in conflict. It appears that 1989 Acts, chapter 27, section 1, was effective from April 18, 1989, until the effective date of 1989 Acts, chapter 247, section 4, on January 1, 1990. Only the latter amendment was codified.
- 321.180** Although the lead-in of 1989 Acts, chapter 265, section 39, indicates that it amends subsection 1, it appears from the text of the amendment that only unnumbered paragraph 1 of the subsection was intended, and the amendment was so codified.
- 321G.1** 1989 Acts, chapter 244, section 3, added a definition of "commission" although the section already contained nearly the same definition. The earlier definition was omitted in codification.
- 442.12** Although the lead-in of 1989 Acts, chapter 135, section 120, indicates that it amends section 442.13, it appears from the text of the amendment that it amends section 442.12, and it was so codified.
- 455A.18** Subsection 4 is codified from 1989 Acts, chapter 311, section 9, subsection 2, as directed in subsection 5 of that section. Although that subsection 5 mentions both subsections 1 and 2, it appears likely that subsection 2 was intended in both cases, so subsection 1, which is a one-year appropriation, was not codified.
- 455B.306** Although the lead-in of 1989 Acts, chapter 272, section 31, indicates that subsection 4 (renumbered as subsection 5) is amended in its entirety, it appears from the text of the amendment that only unnumbered paragraph 1 of subsection 4 was intended, and the amendment was so codified.
- 805.6** Subsection 1, paragraph a, unnumbered paragraph 2, was inadvertently omitted from the database in preparing the 1987 Code. Because the error was not discovered, it was also omitted from the 1987 Code Supplement and the 1989 Code. It is reinserted here.

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References are to Code Supplement sections or chapters. Explanatory notes following each section in this Supplement indicate whether the section is new or amended, or if only a part of the section is amended. Generally, only the new material in a section is indexed, unless the entire section is amended. Consult the one-volume Index (blue) to the 1989 Code of Iowa for more detailed entries.

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